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AS

THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH CONGRESS

FIRST SESSION

ON

S. 535

A BILL TO PREVENT THE UNAUTHORIZED LANDING OF SUBMARINE CARGES IN THE UNITED STATES

MAY 10, 11, 12, 13, 14, 1921

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COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE.

HOUSE OF REPRESENTATIVES.

SIXTY-SEVENTH CONGRESS, FIRST SESSION.

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## CABLE-LANDING LICENSES.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES,  
*Washington, D. C., Tuesday, May 10, 1921.*

The committee met at 10 o'clock a. m., Hon. Samuel E. Winslow (chairman) presiding.

Present: Messrs. Parker, Denison, Merritt, Jones, Graham, Newton, Barkley, Huddleston, Johnson, Sanders, Webster, Mapes, Hoch, Rayburn, and Hawes.

The committee thereupon proceeded to the consideration of S. 535, which is as follows:

AN ACT To prevent the unauthorized landing of submarine cables in the United States.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That no person shall land or operate in the United States any submarine cable directly or indirectly connecting the United States with any foreign country, or connecting one portion of the United States with any other portion thereof, unless a written license to land or operate such cable has been issued by the President of the United States: *Provided, however,* That any cable now laid within the United States without a license granted by the President may continue to operate without such license for a period of 90 days from the date of the approval of this act.

SEC. 2. That the President may withhold or revoke such license when he shall be satisfied that such action will assist in securing rights for the landing or operation of cables in foreign countries, or in maintaining the rights or interests of the United States or of its citizens in foreign countries, or will promote the security of the United States, or may grant such license upon such terms as shall be necessary to assure just and reasonable rates and service in the operation and use of cables so licensed: *Provided,* That the license shall not contain terms or conditions granting to the licensee exclusive rights of landing or of operation in the United States: *And provided further,* That nothing herein contained shall be construed to limit the power and jurisdiction heretofore granted the Interstate Commerce Commission with respect to the transmission of messages.

SEC. 3. That the President is empowered to prevent the landing of any cable about to be landed in violation of this act. Any district court of the United States exercising jurisdiction in the district in which any cable is about to be landed or is being operated in violation of this act, or has been landed in violation of this act, shall have jurisdiction to enjoin the landing or operation of such cable, or to compel by injunction the removal of such cable. If a license to land a cable shall be granted under this act, and if the conditions of such license shall not be complied with, any district court of the United States exercising jurisdiction in the district in which such cable shall have been landed shall have jurisdiction by injunction to prevent the operation of such cable or cause the removal thereof.

SEC. 4. That whoever knowingly commits, instigates, or assists in any act forbidden by section 1 of this act shall be guilty of a misdemeanor and shall be fined not more than \$5,000, or imprisoned for not more than one year, or both.

SEC. 5. That the term "United States" as used in this act includes the Canal Zone, the Philippine Islands, and all territory, continental or insular, subject to the jurisdiction of the United States of America.

SEC. 6. That no right shall accrue to any government, person, or corporation under the terms of this act that may not be rescinded, changed, modified, or amended by the Congress.

Passed the Senate April 25 (calendar day, Apr. 26), 1921.

Attest:

GEORGE A. SANDERSON, *Secretary.*

The CHAIRMAN. Gentlemen of the committee, we have before us to-day for consideration Senate bill 535. You will remember that this bill came to us from the Senate, and that we had an executive session after considerable effort on the part of the chairman to determine whether or not there was any opposition to the bill as it came to the House. His judgment at the time was that there was none, and we acted on the bill. Later on it appeared there had been some misunderstanding between different persons and parties in interest, and the matter was laid before you and you reconsidered the original action and ordered this hearing to-day.

In view of the fact that the bill has been approved by the proponents, perhaps the most interesting feature for us would be to hear from some of those who are opposed to it. The Chair would like to ask the gentlemen here who may be opposed if they have worked together to the extent of determining any order of procedure as to who will speak to the bill? [After a pause.] If there is no suggestion coming from the witnesses who may be here, we will ask the representative of the Western Union Telegraph Co. to address the committee as he sees fit.

Mr. TAGGART. Mr. Newcomb Carlton, president of the Western Union Telegraph Co., will make the first statement.

**STATEMENT OF MR. NEWCOMB CARLTON, PRESIDENT OF THE  
WESTERN UNION TELEGRAPH CO.**

Mr. CARLTON. Mr. Chairman and gentlemen of the committee, the Western Union Telegraph Co. is before you to-day not in opposition to the principles of the bill seeking to define an authority to deal with cable landings, but more particularly with reference to the method in which the bill is urged—urged, we believe, with a view to forestalling the decision of the Supreme Court.

Some months ago, and under the last administration, the Government sought to enjoin the Western Union from landing its Miami cable. The court of first instance held with us; the court of appeals held with us; our contention being that the right to land that cable was with Congress, and that under the post roads act we had a right to land our cable at Miami.

Mr. JONES. Will you explain where that cable comes from?

Mr. CARLTON. Yes; I am coming to that in a minute.

With the cooperation of the Attorney General's office, we got the case to the Supreme Court, I think, in record time. The matter was argued before that court a fortnight ago and a decision is imminent. That decision, we believe, will when rendered define whether the authority for cable landings is with Congress or whether it is with the Executive.

The discussion, which I do not want to go into with too much detail, arose over an extension of the Western Union system to South America, and perhaps I may, with your permission, very briefly refer to it.

I may say in the beginning that the whole matter of our extension to South America, or attempted extension there, and cable landings generally were heard before Senator Kellogg and a subcommittee of the Senate Committee on Interstate Commerce. They devoted several

days to it. I dare say you have seen the record. I have never heard from Senator Kellogg officially what he thought of the hearing, but I have heard, and I judge from what he said before the Senate that his committee were convinced that our desire to land our cable at Miami was a proper one and that we should have been allowed to land.

The contention arose out of a request made by a former Secretary of the Treasury, Mr. McAdoo, who, in 1917, sent for me and said, "There is a paucity of cable connections with South America. We foresee that after the war that country is going to be one of America's principal markets; we want to get ready for it. The whole east coast of South America, with the exception of Buenos Aires, is without cable connection with the United States. We know that your company is a great comprehensive system throughout the United States, and we want you to extend your system to South America."

We promptly sent a representative to South America and made an investigation as to the possibility of a cable landing, and we found this—something that we knew, but our knowledge of it was limited to general knowledge—that a British company called the Western Co. had gone to Brazil in the early days, and as a reward for their enterprise the Brazilian Government said, "We will give you the exclusive right to connect up such coastal points as you may elect and to handle the intercoastal business. We will not say that no other cable company can come to Brazil, because any other cable company may come to Brazil, and they may go to any one point where you are established, and they may connect with any points where you are not connected; but they may not connect up with the points where you are established."

We chose to go to Rio, and we were proposing to go to other points where they were not established, but you must understand that the Western Co. had the principal points.

There was nothing to prevent our success so far as cable operation was concerned. We found, however, when we came to design the cable and take estimates that cable, because of war conditions, had increased over 100 per cent, and to entirely cover the east coast, which meant to go as far south as Buenos Aires, meant an expenditure of many millions of dollars; I believe the expenditure was \$15,000,000. That is double what we estimated in 1917. We felt that it was putting a great deal of money into one enterprise, and we considered that it would be better to connect up the two terminal systems, considering the Western Union land lines as one terminal system and the Western Co., the British company in Brazil, as the other terminal system. We believed that, if we could agree upon connecting these two systems that we could then give the American cabler, the American merchant, the broadest, the most comprehensive system that it was possible to give and in the shortest space of time, and obviously, the most economical.

We knew what the British plans were. As far back as 1902 one of their numerous royal commissions on cable communications had advocated a cable connection between South America and Canada, and in furtherance of that plan this British Western Co. had secured the right to lay a cable from Rio to Barbados and also from Barbados to Bermuda, there connecting with a British cable to Halifax. The object was to give to Canada what the United States did not have, a comprehensive and direct connection with Brazil and the

Argentine through this great distributing system of the English company in South America. We did not like that idea. We are not interested in the telegraph business of Canada, and it seemed to us that we would kill two birds with one stone; that we would not only stop the British development into Canada at our cost—the cost of our commercial life—but that we would also secure at a minimum cost and minimum time the most comprehensive intercommunication between South America and North America.

We knew that President Wilson and several of the Secretaries had been urging in strongest terms the desirability of hastening the connection between the two countries. We therefore took it that we would have the administration's cooperation. We filed our application to pass through the navigable waters of the United States with the War Department and they approved it. The application passed on to the State Department, and we assumed, and had a right to assume from our experiences in the past and from the cordial way in which the Government had urged us to go ahead—mark you, I do not mean to say that the Government had ever approved of the manner in which we were going there—but they had urged us to go there, and this was our way of going there.

We ordered our cable in 1919. Such a cable takes a long time to make. In the spring of 1920 we began urging the State Department to act, for we were following the traditional method of first going to the War Department and then to the State Department as a matter of routine. Please understand when submarine cable is manufactured you can only do one thing with it—you have to lay it in water, or otherwise it rapidly deteriorates. We explained that to the State Department and urged them to act. We thought the delay was due to the natural inertia of a great department; that they were busy with other things, and it was not until the cable was in the ship that we found that the State Department was actively opposed to the project. And they were opposed for this reason: They said, "Here is the British company in South America, and they have an arrangement with respect to the important points in Brazil; your landing your cable at Miami naturally puts them in connection with you, and to that we are opposed."

Mr. GRAHAM. Pardon me, but I have not yet learned where you connected with the British system.

Mr. CARLTON. At the Barbados.

Mr. GRAHAM. You connected with them there and from there ran to Miami?

Mr. CARLTON. Yes; and I am much obliged to you; that is an important point, and I should have made it. I should have said that the British company completed what they undertook to do; they built from Maranhão, Brazil, to the Barbados.

The State Department felt that this was bringing a British monopoly into the United States, and they felt a certain mother's care over another American company, who with enterprise had finally made their way into Brazil. That American company, known as the All-American Co., started many years ago and developed its system on the west coast of South America.

Mr. NEWTON. Where does this All-American Co. connect with the United States?

Mr. CARLTON. At New York. We had always been on friendly terms with that company, and so far as it is within the limits of human nature I suppose we are still friendly. Anyhow, they are all very nice fellows. Their point, however, was that they had a preferential possession, more or less, in the affections of the Government and were entitled to the protection which no other company was entitled to. Of course, we contested that. Their plan proposed to run two cables, one from Buenos Aires north to Santos and the other north from Buenos Aires to Rio. In that way, you see, they were to connect the two most important points in Brazil, so far as cable traffic is concerned, without interfering with the British company. There was no objection to that, but we felt that was an unwise expenditure of money, and we proposed in the contract which we made with the Western Co. that the All-American Co. might, if they chose, come into a tri-party arrangement substantially as follows: The British company should clear out their cables on the west coast and leave the west coast to the All-American Co., and the east coast should be left to the British company, connecting with the United States by way of the Barbados. This left Buenos Aires as a competing point, as both companies, the All-American and the Western, had offices there. I still believe that was a wise thing to do, because there is urgent need for great expenditures of capital to develop the cable facilities of the United States. Millions should be invested, and should be invested speedily, if we are going to hold our position in trade and commerce. I believe generally that it is useless to duplicate cable facilities unless additional facilities are needed. If one company is doing the job it is economy to go somewhere else and develop. It is very much better economics, and the responsibility for developing cable facilities in the United States is in private hands and will be for some time.

Mr. SWEET. Was it a part of your arrangement to connect up with Canada?

Mr. CARLTON. No; this plan of ours of connecting with the British cable company at the Barbados shut Canada off by diverting the British South American system into our system at Miami. That does not mean to say that Canada, with which we have a connection, could not reach Brazil, because Canada could still reach Brazil by sending their messages over our land lines or over the lines of our competitor, the Postal Co., who would in turn transmit them to South America via Miami.

Now, the All-American Co., when they extended their lines into Brazil, were able to reach about 75 per cent of all the Brazilian-United States business at Rio, Santos, and St. Paula. The All-American Co. apparently regarded the British company in Brazil as a not unfriendly association, because in their advertisements they show—I am not criticizing it—the Western system—that is, the British system—as a part of their connecting system in Brazil. They do connect with the Brazilian system. The Western system collects and distributes business, and as they are under international requirements they are forced to recognize what we call the “via”—that is, if you are in Para and wanted to send a message to the United States and wanted it to go by the All-American, you would mark it “All-American.” The British company then is compelled to handle the words “All

American " free of charge and turn it over to the All-American Co. at the nearest point, which would be Rio.

Our advantage, however, over the All-American Co. was that we had contractual relations with this British company, and a contractual relation means a much more intimate partnership than exists between one company and a connecting company, and we undoubtedly had an advantage with the Western Co. over the All-American Co. That advantage perhaps is reflected in the rates. Before we started to go to Brazil the rates were 85 cents a word from New York. As soon as we announced our plans, or shortly after, the rates went to 65 cents. If we succeed in connecting up our line with the Western Co., the rates will be 50 cents, and 25 cents for deferred service, because we have agreed to put in between Brazil and the Argentine a 25-cent service.

Mr. BARKLEY. Per word, is that?

Mr. CARLTON. Twenty-five cents per word; yes. It is the same arrangement in principle that exists on the Atlantic cables where there is a deferred rate. Therefore, so far as the commerce of the United States is concerned, much of the cabling between here and South America will be done at 25 cents a word.

Mr. GRAHAM. The ordinary day rate would be 50 cents?

Mr. CARLTON. Yes; the expedited day rate would be 50 cents, and the deferred or overnight service 25 cents.

Mr. GRAHAM. Well, tell me something: I notice the rate between here and the city of Warsaw, Poland, is 40 cents.

Mr. CARLTON. Yes, sir.

Mr. GRAHAM. Why is it the rates to South America, which presumably are much easier of access, should be higher?

Mr. CARLTON. The Warsaw rate is composed of two rates. The Warsaw business clears at London; the rate from here to London is 25 cents and the rate from London to Warsaw is 15 cents. It is a composite rate.

We will not unduly dwell on the unpleasantness that developed between ourselves and the former administration over our effort to land the Miami cable. There were many strange things that happened; things that one understands, perhaps, when one begins to deal with bureaus and the natural inertia of the great departments. But the former administration went so far as to prevent us by force from laying an inland cable across Biscayne Bay, which was wanted for improving the facilities to the southern end of Florida. They did it, not by right of law—nobody pretended there was any law back of it. It was only because they had the right of might in their hands. And yet we are told, and especially during the last campaign, that we enjoy a Government of laws and not of men. I am somewhat skeptical about that when I have seen the great forces of the United States used without regard to law to suppress an enterprise which was urged only a few months before by that very administration itself. Some of these things we can not account for. And now we are before the Supreme Court.

Mr. RAYBURN. Let me ask you, before you get to that: Did they give any evidence that they would have objected if you had built an all-American line—

Mr. CARLTON (interposing). I do not quite get the question.

Mr. RAYBURN. Supposing you had built your own line to South America, did they object to your joining up with the British company; was that the objection?

Mr. CARLTON. I think I can answer that. I think their objection was that we were joining up with the British company at the Barbados. We offered, in order to cover that point, to make the cable all American all the way from Miami to Brazil, and we are prepared to do that now; that is, to take over the investment of the British company, so that it is an all-American cable from Miami to Brazil. And it is interesting to note that if that is done we are then in the same position as practically every cable that leaves the shores of the United States for Europe and the Far East. The Commercial Pacific cable is operated by an all-American company. It connects at China with an exclusive concession held by a British and Danish company. So that the cable controlled by the Americans is connected at the far end with a British and Danish concession. Our own cables connecting with British and European countries are subject to the exclusive concession held by those countries. The All-American Co., who, I dare say, will explain this at greater length, have been permitted by the United States, and they hold presidential permits to do so, to connect up with Mexico, where there is the tightest kind of a monopoly held by the All-American Co.; nobody can go into that country to do any cable business except the All-American; it is an air-tight monopoly. The All-American Co. also enjoys monopolies especially in Peru and in some other South American countries. So that there has been no objection on the part of the United States in the past to exclusive arrangements. And what we are proposing in South America is not in any way different in principle or in fact from the cases I have cited. And it makes it all the more difficult to know where the objection arises.

Mr. SWEET. Does the Western Co. have an air-tight monopoly in Brazil?

Mr. CARLTON. No; the Western Co. is not an air-tight monopoly in Brazil. Anyone can go to Brazil and secure a concession from the Brazilian authorities. The only thing you can not do, as I explained before, is coastal business between the points where the British Western Co. connects. But you can go to other coastal points and do business there.

Mr. SWEET. And you could have made arrangements there for an all-American line?

Mr. CARLTON. Yes; we could have made arrangements for our own line. Brazil offered us the concession to go to any point that the British company did not go. The difficulty, as I explained before—

Mr. SWEET (interposing). Was the question of economy?

Mr. CARLTON. Was the question of \$15,000,000 expenditure.

Mr. RAYBURN. You told us what the answer of the last administration was to your request. Is this bill the answer of this administration to your request?

Mr. CARLTON. I think I can give you our view about that. The bill was introduced by Senator Kellogg at what I believe was the request of the All-American Cable Co., under a previous administration. His hearings grew out of the introduction of that bill. They

asked for our suggestions, and we made some modifications. Some of our modifications were accepted; others were not. The bill in principle, as I said in my opening statement, we do not object to, but we do object to this, and would ask the committee, if they please, to place themselves in the position of the cable companies. Under this bill you propose to give authority to the President to arbitrarily—I do not mean that offensively—to arbitrarily permit or decline applications for landing cables in the United States. He can make the terms. Now, anybody can at once see the situation. Nobody imagines for a moment that the President, with his many duties, is going to give his personal consideration to the terms of such cable licenses. It is impossible. Therefore this right—this all-powerful right with respect to cables—is going to be exercised by a bureau or by subordinates. That is bound to be. We object to that, and for this reason: If you are going to improve the cable facilities of the United States, you have first to consider very carefully the financial outlook. After you have arranged your finances you have then to place your cable on order, which is a matter of a year or so. Do you think that it would be the part of business prudence to undertake an investment of millions of dollars and then run the chance of what kind of a cable license you may receive from these subordinates who are acting in the name of the President? Suppose you go to the bureau, for there will be a bureau in the State Department. They are diplomats, and they are cautious, and they will say, "When you get your cable ready to land, we will tell you what you can do." During that time there is a change in the head of the State Department or a change in the bureau, and if you have your cable ready, you come before this bureau and are met with an entirely new set of conditions. I ask you seriously, Can an enterprising company face those conditions without grave misgivings? I don't think so. And we have never favored placing this authority with the President, for the reasons I have given you.

We urged upon Senator Kellogg that he place the authority with the Interstate Commerce Commission, because there was a commission that was used to hear these things, a commission of continuing methods, if you please, and one that we are not afraid to place our trust in. He thought that was unwise, and they decided upon the President, which we reluctantly accepted.

I believe, gentlemen, if I may put it to you without being offensive, that this great urge that is being now placed behind this bill in order to forestall the possible action of the Supreme Court bears out what I say about the workings of the bureaus in these great departments. With all respect, a bureau which continues over from the past administration is bringing out and urging the passage of this bill. Why? Well, if we were not talking in diplomatic language we would say they were afraid of being beaten. They want to forestall the opinion of the Supreme Court.

I want to ask you, Do you know of any more orderly way of conducting business than submitting to the jurisdiction of the Federal courts? I do not know of any. And yet here is a corporation which has gone through the orderly processes and has gone in with an investment of \$3,000,000 on a cry for the development of cable facilities to a foreign country; it has invested the funds of its stockholders

in the enterprise, and they appeal to the Supreme Court for an interpretation of the law, and before we can get it, in unseemly haste the State Department comes before you and says, "Jam this bill through."

Mr. JONES. Mr. Chairman, may I ask a question?

The CHAIRMAN. Certainly.

Mr. JONES. This matter started by an injunction suit by the Government against your company?

Mr. CARLTON. This particular case started by an application by the Government for an injunction against the company.

Mr. JONES. They furnished the action?

Mr. CARLTON. Yes; and it is on appeal.

Mr. JONES. The Government lost in the district court?

Mr. CARLTON. They lost in the court of first instance, and in the appellate court.

Mr. JONES. Then, they are the appellant; they have taken it to the Supreme Court?

Mr. CARLTON. Yes, sir.

Mr. JONES. The Government is the appellant?

Mr. CARLTON. Yes, sir.

Mr. SWEET. Do you believe, as a question of law, if a license is granted to the company that that license may also be revoked at will?

Mr. CARLTON. I am afraid I did not quite catch that.

Mr. SWEET. In case a license is granted to the company, can that license be revoked also at will, under this bill?

Mr. CARLTON. Under this bill it certainly can be revoked at will. And right on that point let me refer to the same orderly procedure—

Mr. BARKLEY (interposing). What is the vital point to be decided in that case?

Mr. CARLTON. I prefer to let Mr. Taggart, our general counsel, speak of that.

Mr. BARKLEY. Will you be good enough to answer that, Mr. Taggart?

Mr. TAGGART. If I may say at this time, Mr. Chairman and gentlemen, there are two fundamental questions in that case. First, the question as to whether there is a power in the Executive, as claimed by the State Department, to control cable landings without express authorization by Congress, under a statutory power. That is the first great fundamental question. Second, whether the Congress has granted to the Western Union Telegraph Co. the right to lay this cable under the navigable waters of the United States, being within the 3-mile limit of the American beach, by the act of Congress of July 24, 1866.

I might further say, since I am on my feet—not to interrupt but to answer the question of a previous gentleman in regard to the litigation, and that the litigation matter may be better understood. There are two litigations. The first litigation was brought by the company in the Supreme Court of the District of Columbia to enjoin the Secretary of the Navy and the Secretary of War from interfering with our landing of that cable; and that was heard and was under consideration by the court when the Government went to the southern district of New York and instituted the suit which is now in the Supreme Court.

Mr. GRAHAM. May I ask a question?

The CHAIRMAN. Yes.

Mr. GRAHAM. Is there any liability that this case now pending in the Supreme Court may go off on the pleadings and not on the merits?

Mr. TAGGART. I do not see how it can.

Mr. GRAHAM. The merits must be decided?

Mr. TAGGART. I do not see any other way; the only possibility for a course of that kind, such as you have suggested, would be in case this bill was passed and the Supreme Court should consider the question a moot question in that situation.

Mr. GRAHAM. I confess some unfamiliarity with the act of 1866; what is that act?

Mr. TAGGART. That is known as the Postmaster General act, under which there is granted, in section 1, to any telegraph or telephone company organized under the laws of the United States, and which accepts the provisions of the act, the right to construct its lines upon and over the post roads and the military reservations of the United States and under the navigable waters of the United States. It is under that grant of power that this question arises. And I might say with respect to that that this case which I have alluded to for the first time presents the question as to the right to construct under and across the navigable waters, meaning by that the right to lay a cable within the 3-mile limit. It is the first time that this question has ever been presented.

Mr. BARKLEY. That cable is not all within the 3 miles?

Mr. TAGGART. It would be from Miami Beach out 3 miles.

Mr. BARKLEY. And then it would be in the ocean?

Mr. TAGGART. It would be then in the open ocean, which is free to the world, as I understand the international law.

Mr. CARLTON. Just two or three minutes more.

Before Secretary Hughes was warm in his seat we called to lay this question before him, because of this impending legislation, and we suggested that he might be willing to let us bring our cable on the beach at Miami, subject to such laws as might be enacted or any rules or regulations made by the governing authority. But the Secretary said, and I thought his point was very well taken—he said, “Gentlemen, I know nothing about this matter. I have many things before me. My authority to deal with it has been questioned. I believe you are going to the Supreme Court”—and Mr. Taggart, who was present, and he discussed how they might get to the Supreme Court in order that it might be adjudicated promptly—“if I took it up now I might find, when the Supreme Court has decided it, that I had wasted my time. I do not want to waste any time. I suggest, therefore, I do not take kindly to your landing until this is settled by the Supreme Court. I will let it stand as it is until the Supreme Court has acted.”

We were therefore a little surprised that the urge for this bill was coming from the State Department. We telegraphed to Mr. Hughes, and there was a touch of acrimony in our correspondence, and we think rightly so. Anyhow, we said, “We are willing to take the consequences. We are the people who have the money invested. If the Supreme Court says no, Congress has no authority, it is with

the President, then we have either got to do one of two things—we have either got to leave this cable where it is or we have got to coil it up and take it away and put it elsewhere.” And, putting it elsewhere—where? As soon as this situation arose we heard from the other side, offering us the hospitality of the shores of Bermuda, showing that they are awake to the full situation, and with the idea of connecting up with Canada. I am not saying what we will do if we do not get reasonable terms, because reasonable terms always flow from reasonable men. But the risk is ours. We say, only let the court act.

They will tell you that the country is in great danger unless you pass this bill immediately, because if the Supreme Court says that the President has not the authority, our shores are subject to invasion by all sorts of cables. You can almost see them in the air, about to settle on the beach. Gentlemen, if you allow me to use a rather strong expression, that is nonsense. We know something about the cable business. It is our business to know about it. There are two companies that are making cable to-day, and they are both located in Great Britain, and one can make about 5,000 miles a year, and the other perhaps as much as 12,000. We know the program of both of them: our engineers are in and out of both of these concerns constantly. It is our business to know. There are two ships in the world to-day that are capable of laying a cable. It is a tremendous undertaking, the laying of a cable. One is under charter to us for a considerable time in the future, and the other is booked up for extension and repairs on the British coast and in the Far East. There isn't any more likelihood of a cable being laid on your shores in the next six months or a year than that we will be transported on wings out of this room. That is nonsense; it is not true. But suppose some one has one coiled up in his cellar and does lay it—it is a large operation, this business of laying cables—you pass this act, and in the next 90 days his cable will have to be licensed; his cable is only good for 90 days, and then he has to get a license. I want to state the facts. I am willing to take the consequences. I do not want this body of men frightened into doing something by a bogey.

I have one other point. If we have excited any interest—we are trying not to excite any passion, but are willing to proceed on the merits—and if we have excited any interest in this committee for the purpose of getting information—and we do not want to delay the orderly processes of this bill, but if you are interested in a bill that we think will cover the ground and encourage the cable companies to proceed with the development of cable facilities for the United States, we have prepared a substitute bill the principal item of which is that it constitutes a body of three men, the Secretary of State, the Secretary of Commerce, and the Postmaster General, who will hear applications and determine applications for licenses. We have been existing for 52 years. Apparently nothing terrible has happened. We propose an orderly procedure where three men can sit as a commission. Other nations do that, and find that it work very well. In Europe, where we have eight cables, we have to negotiate a new cable-landing license every five years, and they stick in a little more each time. That is the object of it. Here is an orderly proceeding proposed, and one we are not afraid to trust.

Just one more word. This activity of the State Department—which I think is unwise and which I understand is a holdover from the past administration—means that it is inviting reprisals. Every cable that leaves these shores is after foreign business. We want more business in China; you know the urge to do business in China. Our friends the Commercial Cable Co., whose lines are on the Pacific, have plans to lay another line to China, and they have a monopoly with China.

Mr. BARKLEY. What do you mean by a monopoly with China? Do you mean a monopoly in the place with which it connects?

Mr. CARLTON. There is a concern to which China granted a license, a British and Danish company, which practically means that you can not land a cable and do a cabling business with China without making arrangements with that country.

Mr. BARKLEY. So it is a telegraphic monopoly?

Mr. CARLTON. Yes; a telegraphic monopoly. That is the old way in which countries encouraged cable companies to develop and do business.

Mr. BARKLEY. I would like to ask you a question about the interpretation of this bill. Section 1 provides:

That no person shall land or operate in the United States any submarine cable directly or indirectly connecting the United States with any foreign country, or connecting one portion of the United States with any other portion thereof, unless a written license to land and operate such cable has been issued by the President of the United States: *Provided, however*, That any cable now laid within the United States without a license granted by the President may continue to operate without such license for a period of 90 days from the date of the approval of this act.

The question arises as to the technical meaning of a submarine cable, whether that means that a cable has to run under the seas or whether the meaning is broad enough to take in anything that runs under the water. What is the technical definition of "submarine cable"?

Mr. CARLTON. The technical meaning is a cable that runs under the water.

Mr. BARKLEY. Without regard to distances?

Mr. CARLTON. It has nothing to do with distances; it has nothing to do with the kind of water it is laid in. And this bill, although they will tell you it is not intended to deal with inland cables, covers every inland cable in the United States, and that, I submit, in itself, is quite unnecessary, because every telegraph and every telephone and every electric-light company uses innumerable cables in crossing the inland waters of this country. Why have them come here in 90 days and get a concession? These people will tell you that they do not care about them. When they operate, they will say, "We do not care about you; we do not want to hear from you." But there may be some other matter, maybe a question of rates. Then they may say, "Here is something we can try these fellows by; they have got to get a landing license," and says in the act—

Mr. BARKLEY (interposing). Is that language based on any use of a commercial cable, or is that the legal interpretation?

Mr. CARLTON. I am informed that that is a legal interpretation of a cable.

Mr. BARKLEY. I have always understood that the word "submarine" does not necessarily confine itself to the Latin derivation

of the word, meaning "under the sea." It may mean any cable under the water. I remember the first submarine cable that was ever laid in the world, and it was under the Ohio River at the point where I live. They called it that, and that did not go under the sea. There was a query in my mind, and it arises out of the fact that if the President is going to be given this authority to grant licenses connecting one portion of the United States with another portion of the United States, and in connecting those two portions you happen to run under a bay or a lake, or the wide mouth of a river, whether it would be construed in law as a submarine cable covered by this act, and your opinion is that it would?

Mr. CARLTON. Yes. Suppose, as an example, there were two ways of connecting parts of the United States; one was by crossing a river, but because of certain deleterious qualities of the water or the bottom it was not practicable to run a cable across that river. Now, you have an alternate route, maybe, by going to sea and going around the mouth of that river, and thereby joining two parts of the United States. In the one case they say the cable would not be subject to the provisions of this bill, where they run across the river, and in the other case it would because it goes to sea. To me, that is full of innumerable pitfalls. You take the Potomac River, for instance. If you crossed where the water is fresh, they would say that it is not a submarine cable, but if you go down to where the water is brackish, they would say it is a submarine. To me that is open to innumerable situations that—

Mr. BARKLEY (interposing). What application would this law have if we accept your definition of a submarine cable, which I am inclined to accept; I do not see any other way around it? What effect would that have on telegraph companies and telephone companies laid around New York, say, or San Francisco Bay, and connecting cities with each other in one part of a State with some other part of the State; would it give the President the right to control the underwater cables and the operation of it?

Mr. CARLTON. Our view is that it would, because the President controls all the cables. That is our view of it.

Mr. BARKLEY. Assuming that some bill should be passed governing the landing of cables from the United States to foreign countries, or from one part of the United States to another part of the United States, what language do you suggest that should deal with it?

Mr. CARLTON. Mr. Taggart will deal with that more fully. The only point you want to protect is our overseas domains. You will want to protect the cables between the United States and Guam, and between the United States and the Philippines, and the United States and Porto Rico, etc. It is easy to see that this bill should deal with cables connecting the United States with those overseas possessions. But it should not cover interstate or intrastate cables.

Mr. BARKLEY. Would it be possible then for some foreign country, or some foreign cable to make a connection with these cables that might connect one State with another, or one portion of the country with another, and permit them to accomplish the same purpose as if they landed in the United States itself?

Mr. CARLTON. I do not think so, sir, because, after all, when connecting with an intrastate or interstate cable you have got to get into the State and land on some beach, which immediately puts that cable under the control of this bill.

Mr. BARKLEY. Suppose the concern that operates the intrastate or interstate cable had a cable running out to some point beyond the 3-mile limit, and some foreign company could come and connect up with this company, how would that situation be saved?

Mr. CARLTON. That is covered by this bill, because if that action was thought inimical, the President has a right to stop the landing.

Mr. BARKLEY. It might not land in this country.

Mr. CARLTON. It must come to shore somewhere, and as soon as it gets to shore it comes under the provisions of this bill.

Mr. BARKLEY. I thought they might connect up with a foreign company somewhere and never come to this country, but by arrangement with an American company it could come to this country.

Mr. CARLTON. The American company has got to come to this country.

Mr. BARKLEY. But I was assuming that this American company does not come in, but has gone out.

Mr. MERRITT. I was going to ask Mr. Carlton if this language was not very broad:

No person shall land or operate in the United States any submarine cable directly or indirectly connecting the United States with any foreign country.

Of course, every cable connects directly or indirectly with the United States; every cable must connect indirectly, at least, with the United States.

Mr. CARLTON. That is true. Senator Kellogg, if you will read the Senate discussion, and the committee, they were all very much of the opinion that it did not cover the ground, and yet, after drawing something which nobody understands, they say, "If you violate it, you go to jail." That is an additional inducement to remain in the cable business.

Mr. MERRITT. To encourage the others?

Mr. CARLTON. Yes, sir.

Mr. JONES. Then, the effect of this would be, there would be no landing or operation of any telegraphic system of any kind, only those subject to a license granted by the Executive?

Mr. CARLTON. That is what it says.

Mr. JONES. Now, one more question: Is it possible to have a cable from some point in a State to some other point in the same State, like in Michigan, around the Lakes, to go under the Lakes and have a cable?

Mr. CARLTON. Yes; it is perfectly possible, and such a thing does actually exist.

Mr. JONES. Congress would have no jurisdiction over that matter, or the Executive either, would it?

Mr. CARLTON. The Interstate Commerce Commission does have jurisdiction over that matter.

Mr. JONES. Over a cable from one point in a State to another point in the same State?

Mr. CARLTON. Well, if it is intrastate, I assume your State commission would have jurisdiction. We actually have that condition in Michigan, connecting the lower peninsula with the upper peninsula.

Mr. RAYBURN. Suppose you lay a cable from Galveston, Tex., to Aransas Pass, Tex., under this bill as written now?

Mr. CARLTON. I suppose if it stays within navigable waters it is then subject to the regulations of the War Department, who would say whether or not it was an impediment to navigation. It would be an intrastate cable.

Mr. RAYBURN. I am talking about this bill as written now. The question I asked is this: Suppose you lay a cable from Aransas Pass, Tex., to Galveston Tex., which goes from one point in that State to another point in the same State, and you are going to lay a cable from one of those places to the other, would that come under this bill?

Mr. TAGGART. I think it would, for this reason: That the power is given to Congress to regulate commerce with foreign nations and between the several States, and that has been held by the Supreme Court to cover the waters within the 3-mile limit—all questions relating to navigation—and this being a question directly connected with the question of the navigable waters and what may be put in them, has been held, notably by Justice Bradley, in a great opinion with respect to putting piers or a bridge within the 3-mile limit, although the land under that water is the property of the several States. I think that would be the answer to your question.

Mr. BARKLEY. Suppose the cable was not confined to the 3-mile limit; suppose it ran a hundred miles out from the shore, but still connects from some point in a State to some other point in the same State?

Mr. TAGGART. Well, if the cable in question was simply from one point in a State to another point in the State that did not form a part of a general line of communication I think it might be a serious question as to the commerce over it, as to whether that was in any respect subject to the provisions of this act.

Mr. BARKLEY. Under the wording of this act which says "one portion of the United States with any other portion thereof."

Mr. TAGGART. I understand that.

Mr. BARKLEY. And that, you think—

Mr. TAGGART. That would be a question I would leave to the Supreme Court to pass on. As to the commerce over it, I think the regulation of that would be under the State; that is, from one point to another point.

Mr. GRAHAM. Mr. Chairman, I want to ask a question or two: Now, I notice on page 2 of this proposed bill the President is given the right—

Mr. WEBSTER (interposing). Mr. Chairman, Mr. Taggart is expecting to make a statement in this matter.

Mr. TAGGART. Yes; a very brief statement.

Mr. WEBSTER. Would it not be conducive to clearness to go on with Mr. Carlton, and then have Mr. Taggart make his statement?

Mr. GRAHAM. It will not take long for me to finish my question. The President, on page 2 of the proposed bill, is given the right to license cable companies, and the statement is made in line 4, "or may grant such other license upon such terms as shall be necessary to assure just and reasonable rates and service in the operation and use of cables so licensed."

Now, I take it from that that the President might, if he desired and this act were passed, make a license conditioned that there should be a certain maximum charge or, in other words, that the charges should not exceed a certain rate; make it conditional on that.

Now, then, the second proviso is:

That nothing herein contained shall be construed to limit the power and jurisdiction heretofore granted the Interstate Commerce Commission with respect to the transmission of messages.

What would happen, for instance, if the matter came up before the Interstate Commerce Commission and they had a different idea from the Executive as to what the charge should be?

Mr. TAGGART. That question was considered by myself and Senator Kellogg, because I remember that I suggested it in the conference with him after he presented the bill to the Senate for consideration with reference to that situation. There may be two possible collisions in this matter, which I might state right here. You have mentioned the one, the one which you just suggested with respect to the Interstate Commerce Commission. The post roads act provides that the Postmaster General, with respect to a company which has accepted the provisions of that act, may fix the rate for Government messages. And you have a possible collision with respect to that, unless this bill could be considered as impliedly repealing that provision of the post roads act of 1866, in so far as it conflicts with that act. I have referred to that. The other which you have suggested, I suggested to Senator Kellogg, and I allowed it to go at that. He suggested this solution of the matter, that the President, or the executive department, was not in a position to have hearings and take up the question of the details of rates but could provide general regulations as to the rates, that they shall be just and reasonable, or that they shall be uniform, or matters of that sort, leaving to the Interstate Commerce Commission the jurisdiction which it already has under the act as it now stands, to go into all questions of detail, practices, and all features of that sort, and apply them to these cable companies, just as they have the power now within the act.

Mr. GRAHAM. I concede that could be done, and that would be a proper procedure. But suppose you had an Executive who desired to specify certain terms, and claimed the right under this act.

Mr. TAGGART. Then the question would be as to how far this act gave him power to go into the details which the Interstate Commerce act now confers upon the Interstate Commerce Commission, and which this proviso reserves.

The CHAIRMAN. If there is no objection we shall now reserve our further questioning of Mr. Taggart and continue with Mr. Carlton.

Mr. HAWES. Mr. Carlton, this Senate bill 535, do you consider that a State Department bill?

Mr. CARLTON. Yes.

Mr. HAWES. Well, what is the difference between the policy of the last administration and the present administration in relation to this controversy, if there is any?

Mr. CARLTON. Well, I can only repeat what Mr. Hughes told me when we called on him. He said, "When the matter of the Miami cable come up to be dealt with, I shall have hearings of all those interested and examine the record and make up my mind as best I can."

There have been no such hearings. I am sure there have been none, because we would have been notified to be there, and I, therefore, assume that Secretary Hughes has not yet made up his mind, because it has not yet come before him. I do not think that the policy of the present State administration has been changed from that of the former State Department, because the same bureau which dealt with it is dealing with it now. It is a hold over.

Mr. JONES. The same proposition?

Mr. CARLTON. The same proposition, yes; but I expect that when the facts are known by the present executives in the State Department that there may be some change in view or policy.

Mr. HAWES. Well, up to this time there has been no change of policy between the last administration and the present administration?

Mr. CARLTON. I could not answer that categorically. I could not say that, because we have not appeared before the State Department with respect to this Miami cable, and until we have, I can not say what the policy is going to be, except what Mr. Hughes told us on the 7th of March.

Mr. HAWES. You understand that the State Department is urging the passage of this bill, do you not?

Mr. CARLTON. I understand that the State Department, as expressed by this bureau, is urging the passage of this bill.

Mr. HAWES. Mr. Carlton, I believe you suggested a commission to handle this matter, composed of the Secretary of State, the Postmaster General, and one other official?

Mr. CARLTON. Yes, sir.

Mr. HAWES. The Secretary of Commerce?

Mr. CARLTON. Yes, sir.

Mr. HAWES. One of the arguments advanced being that the President if assigned this function would not have the time or the opportunity to give his personal attention to it, and it would be delegated to some one else. What would be the objection to the President making this delegation? Of course, the three men that you mention would probably have their other duties to perform, and they would delegate investigations to subordinate officers. What is the distinction between the two, in your mind?

Mr. CARLTON. Well, I may be quite wrong, sir, but I had considered that cable applications are so infrequent and of such importance that even the Secretary of State, the Secretary of Commerce, and the Postmaster General could devote the few hours that would be needed to learn the facts, and so personally supervise and pass upon them. The difficulty with the bill that is before you is that it will go to one point only; it will go to a bureau in the State Department.

Mr. HAWES. As a matter of fact, Mr. Carlton, this is not an attempt upon the part of the Government to regulate rates or the form and method of transmitting messages, but it is an attempt to regulate our communications with foreign Governments, and that is the interest that the State Department has in it.

Mr. CARLTON. They are one of the interested parties, but they are not the sole party that is interested. What about the Department of Commerce? Could there be anything more important than that

the Department of Commerce should be heard in matters concerning overseas communication which directly has to do with commerce? It seems to me so.

Mr. HAWES. The main contention of the State Department is one of the relationship of this Government to foreign Governments in regard to cable communications. That is the contention, is it not—the basis of it?

Mr. CARLTON. I assume that is their interest, and I can cite you, without delaying unduly, a case in point which we are very much interested in and which falls within the jurisdiction of the State Department.

The French people 50 years ago landed a cable on these shores. Later on they landed another, and they agreed that with the permission to land those cables they would grant American companies the same rights in France that they were granted in the United States. The American companies attempted to secure the same rights in France that the French companies secured in this country. We haven't got them to this day. Now, I assume—and I think it is one of the desirable features of a bill such as in principle you have before you—that it places in the hands of an authority the right to say to France: "Now, gentlemen, come up with your obligation or get off." That is perfectly proper, highly desirable. We are all for that. It is a necessary thing to do, but that does not say that if an enterprising company desires to add one more cable at your overseas communication that there is only one department that is concerned in it, and that is the international relationship that flows from that. I say there are other departments that are equally interested, and I cite the Commerce Department as one.

Mr. HAWES. Mr. Carlton, a cable, of course has two ends. Our Government can control our end. Now, if American capital wants to invest in a cable with this power in the hands of the President asked for by this bill, would it not be an assistance to American capital in securing the laying of the other end of the cable to give to the State department or the President the power of trade, if exercised properly?

Mr. CARLTON. If I understand you, you mean that there would be negotiations between this country and a foreign country concerning the landing of the other end of the cable?

Mr. HAWES. At the foreign end.

Mr. CARLTON. Well, let me say this: Take England, where we have had very long experience; there is no difficulty in getting a landing license in England. England has more or less a standard form of landing license. You know before you start—if you are going to lay a cable across the Atlantic with a terminus in Great Britain—you know before you start just what you are going to be permitted to do. You know that your treatment is precisely that of all other cables that are leaving or terminating on the shores of Great Britain. Now, the State Department is not needed to negotiate that landing license. The cable company itself goes to the authorities and says: "I want to land a cable on the shores of Ireland," or, as we have, at Penzance. They say: "All right, you know the form of cable license. Are you prepared to sign it?" "Yes; bring it up." In half an hour or an hour it is done. There is no diplomacy or negotiation necessary there.

Mr. HAWES. Couldn't England change—and I believe you stated in your testimony that the regulations were changed frequently over there?

Mr. CARLTON. Yes; every five years we have to negotiate a new landing license, but the safety there is that they are compelled to give you what they give to all others. Our friends, the Commercial Co., our competitors in the North Atlantic, have five cables landing in Great Britain. They get exactly the same thing that we get, and we get exactly the same thing that they get.

Mr. HAWES. They do now, but suppose they should change and create some arbitrary rule which would be to the manifest disadvantage of an American enterprise, with this power placed in the hands of the President which the State Department is asking for, our Government would then be in a position to retaliate or get for the American investor a good trade.

Mr. CARLTON. Well, sir, if I get your point, suppose no such bill existed, and suppose this situation arose, as you have outlined, wouldn't the American company have just as much position with the State Department if they represented that they were being discriminated against overseas, and wouldn't the State Department have just as much power and influence with that foreign government if they made representations with or without this bill? It seems to me they would. That is the function of the State Department.

Mr. HAWES. I don't think so. It seems to me this gives an additional power to the President to control this end of the cable in all cases, and he can say to the foreign country: "We will permit this regulation in your country provided you deal fairly with our end of the line."

Mr. CARLTON. Yes; but the trouble is that England doesn't land any cables on our shores, so there is nothing reciprocal.

Mr. HAWES. This law, of course, would cover communications with all parts of the world, new cables and old cables, and isn't it after all an attempt upon the part of the State Department to give our Government the lawful power of trading or dealing with foreign countries in connection with this very important method of communication?

Mr. CARLTON. But I am frank to say that from my experience the State Department has never shown any embarrassment in approaching France and other countries with respect to the extension of cables in their countries through diplomatic channels, and on the usual basis of such diplomatic interchanges. I don't see, myself, where the State Department requires authority to deal with American cable licenses; that that gives them any additional power in dealing with foreign Governments. They have got that power now, the power which they have always possessed, and which we have never found them slow to exercise, I must say that.

Mr. SWEET. Now, if I get the right impression from your statement, you feel that there is a race between the Supreme Court and the State Department, the Supreme Court rendering a decision, the State Department getting the law passed?

Mr. CARLTON. Yes, sir.

Mr. SWEET. Now, then, you are in favor of establishing by legislation some authority?

Mr. CARLTON. I am.

Mr. SWEET. For handling this question?

Mr. CARLTON. We are, unequivocally.

Mr. SWEET. Then why should you oppose this bill and make the statement that you desire that the decision be rendered by the Supreme Court before the legislation is passed? Is there anything to be gained by your company or any of those interested in the question between the time the Supreme Court renders its decision and the legislation is passed?

Mr. CARLTON. Yes.

Mr. SWEET. What is it?

Mr. CARLTON. It is this, in our view: We made a large investment under the belief that Congress had the authority over cable landings and that we possessed the right under the post roads act to land a cable at Miami. We still think we are right, and the lower courts have said we were. If the Supreme Court holds that we are right, our cable will be landed. A landed cable and an operating cable must be dealt with by the authorities on all fours with cables which are similarly operating. A cable which is outside the 3-mile limit and hasn't yet come up on the beach is in quite a different position, quite a different position.

Mr. SWEET. In other words, to be plain, after the decision of the Supreme Court is rendered and there is no legislation on this subject by Congress, then you would go ahead in accordance with the rights as laid down by the decision and land your cable?

Mr. CARLTON. Yes, sir.

Mr. SWEET. And then it would be necessary for Congress to deal with a situation which at the time you landed your cable was legal, and you would not have any interference from any established authority in this Congress?

Mr. CARLTON. Yes; may I say to you, sir, that there are about 20 cables doing business from the United States to foreign countries without licenses, as covered by this bill. There are some cables which are operating quite lawlessly, if I may put it so. They have no right under the post roads act; they have no authority of Congress to be on your shores; they have no right of presidential permit to be here. Now, a cable if landed on the shores at Miami would be in the category of the 20 cables—as many of them as might fall under that definition—that are operating by virtue of what they believe is congressional authority, but those cables, with our cables to Miami, could only operate 90 days under that provision. But don't you see that we have a status, and we only want the same status that the other cables have which are landed on these shores; but if we are wrong, if we have been misinformed by our legal staff and we haven't this right, and the Supreme Court so holds, then we are still at sea, and as I said before, we can do one of two things, and I ask you—and if I have not carried conviction to your minds, then we must take the consequences—I ask you to put yourself in the position of the executive of the Western Union Telegraph Co. and taking my statement as correct, wouldn't you like to hear from the Supreme Court whether you were right in having advised your directors to make an investment of \$3,000,000 in a South American cable venture, and finally succeeded in landing that cable, only to be subject to a bill,

which will pass undoubtedly, and which we are in favor of, which will give you 90 days' leeway to negotiate a license? We can then go to the authority, whoever you set up, and say, "Gentlemen, we are on all fours with these other cable companies, and we have a right to be," but sitting on a buoy 3 miles out we are in quite a different position.

Mr. SWEET. But this decision may not be handed down for some time, and that would postpone legislation. Your contention comes squarely down to the proposition that you wish to have this decision rendered before the legislation is passed?

Mr. CARLTON. No; I don't go as far as that. I say that if in the ordinary procedure of a bill of this character, taking its place on the calendar, if it become a law before the Supreme Court renders its decision, that is one of the cruel fates that we must submit to. What I am objecting to is the urge which is put on it now to pass it before the Supreme Court can possibly have the opportunity to hand down its decision. I should think that if, in the minds of this committee, the Government needed this authority after 50 years, and needed it this summer as the result of the orderly procedure of your legislative matters, you would never hear any voice from us. We certainly don't come here and ask you to postpone legislation until we can hear from the Supreme Court. That is about as falacious as the State Department coming to you and saying, "Expedite it before they come here from the Supreme Court." No, gentlemen, we are not going to ask you to do that. We say we will take our chances if you will let the bill take its orderly place on the calendar, but we expect to hear from the Supreme Court before then, and I have told you very frankly why we want to hear from it.

Mr. COOPER. Mr. Chairman, may I ask a question there? Mr. Carlton, when did you first start work on this project, this cable.

Mr. CARLTON. Now, don't hold me too closely; I am going to give you the best of my recollection. We placed the order for this cable in 1919 and made the contract with the Western Co. in July, 1919.

Mr. COOPER. And you had no intimation, did you, that the Government would prevent you from landing this cable?

Mr. CARLTON. None whatever.

Mr. COOPER. And you invested your \$3,000,000 in this project—\$3,000,000, did you say?

Mr. CARLTON. \$3,000,000; yes.

Mr. COOPER. And after you had almost completed the work, then the Government stepped in and said you could not land?

Mr. CARLTON. That is the fact. But let me say to you that in 1917 my company laid a cable from the United States to Penzance, England. That cable cost about \$5,000,000 or \$6,000,000. Cables were a good deal cheaper in those days. It was a very much longer cable. We followed precisely the same procedure in this South American cable that we followed in 1917, and we assumed that the same course would be followed by the Government.

Mr. COOPER. Well, the Government was aware that you were working on this project at the time?

Mr. CARLTON. We notified the Government in the spring of 1920, through the War Department; from the War Department to the State Department. Early in the spring of 1920 we appeared before

the State Department. Early in the spring of 1920 the State Department, or some one, appointed the committee consisting of an admiral in the Navy and some general in the War Department and somebody from the Commerce Department. Both the Army and Navy were in favor of the landing of this cable, and we kept in touch with these things; we supposed that we were—we began to feel just a little bit heroic over the thing, people seemed to be so well pleased about it—so you can imagine the shock that came to us when the whole Navy of the United States, apparently, steamed out to defend the shores against the laying of the cable by this old cable ship that sailed down from Newport News; and in order that the Government might have full knowledge of every step, we took particular pains to tell them. We had this cable vessel land at Newport News; she unloaded the shore end and declared it in the customs and paid the duty, and it was transferred to one of our own cable ships flying the American flag. The ship that laid the main cable was a contractor's ship flying the British flag. She only laid outside the 3-mile limit, so that the Government had every possible notice of our plans and intentions.

MR. COOPER. Well, the reason I asked you that question is that I, as one member of this committee, want to try and be absolutely fair in the consideration of this matter. I believe that your company probably acted in good faith in laying that cable.

MR. CARLTON. Nobody has ever challenged that.

MR. COOPER. But so far I, personally, have not received any information as to why the Government stopped you.

MR. CARLTON. I can tell you this—I don't want to tell any tales out of school—but this curious thing happened: About the time that our cable was being dealt with Mr. Lansing was leaving the State Department, Mr. Frank Polk was Acting Secretary, and he was about leaving, Mr. Colby was on his way in, and early in August, after this cable ship had started to lay from outside the 3-mile limit, I came down at Mr. Colby's invitation to discuss the situation, and Mr. Colby, who had just arrived, had a sheaf of papers, which as I talked with him he attempted to scan to get some idea of it. He said: "Frankly, I don't know anything about this situation, but I will look into it." About three months before that the President had appointed a cable communications committee, which was to deal with the disposition of the German cables, among other things, which you will remember under the treaty was turned over to the five powers. For some reason or other the President got the idea that that communications conference was going to deal with cable-landing licenses, and there was going to be a clearing house, everybody was going to be four-square, everything of an exclusive character, everything on their shores and our shores, and there was going to be a standard form agreed to. Nobody that I talked with ever had any idea that they were going to discuss that particular subject. The President got that in his mind, and he had the papers sent to him.

The first man that I found that had time to take it up was Mr. Norman Davis, who gave it favorable consideration. I shall not repeat what Mr. Norman Davis said to me, because perhaps it was rather private, but at any rate he showed a great deal of interest in

having the matter settled, and from what Mr. Norman Davis said—and it was his own personal view—we were encouraged to believe that within three or four days we would secure the necessary permit. This was in August. Mr. Davis was compelled to say, however, after two or three attempts to discuss it with the President, that the President's mind was fully occupied with other things, or his health was not particularly good and they were not able to get to him. Finally he said he thought the President's mind had been made up on the subject to await the conclusions of the cable communications conference, which, as I say, had not the remotest idea of discussing a uniform cable-landing license and were only concerned in discussing the disposition of the German cables, which, after months, or weeks and weeks of discussion, remain just exactly where they were.

MR. GRAHAM. Mr. Carlton, I want a little more information about this all-America company. When was that organized?

MR. CARLTON. About 50 years ago.

MR. GRAHAM. Do you know who the directors are, who the president is?

MR. CARLTON. Yes; they are represented here, sir, and if I might suggest, you might want to ask the names of their directors from their representative, who is in the room.

MR. GRAHAM. They have representatives here who will appear before the committee, I assume?

MR. CARLTON. I presume he is here for that purpose. Their general counsel is here.

MR. GRAHAM. Is there a representative of the State Department here, do you know?

MR. CARLTON. There is.

MR. GRAHAM. That is all.

MR. WEBSTER. Mr. Carlton, I am sure you will agree with me that as a fundamental proposition the proper solution of any question involves an understanding of the fundamental facts giving rise to it. At the expense of repeating in some instances, I want hurriedly to go over this matter with you and see if we can not get at it a little more definitely. As I understand it, the Western Telegraph Co. is a British corporation?

MR. CARLTON. It is.

MR. WEBSTER. Enjoying certain monopolistic or preferential privileges with respect to intercoastal cable communication with Brazil?

MR. CARLTON. It is.

MR. WEBSTER. The effect of this grant is not to exclude all foreign countries from landing on the shores of Brazil, but is to prevent the connecting of any two points in Brazil served by the Western Telegraph Co.?

MR. CARLTON. That is correct.

MR. WEBSTER. Some time ago your company—I mean the Western Union Telegraph Co.—had in mind establishing cable communication between the United States and South America on rather a broad and comprehensive plan?

MR. CARLTON. Yes, sir.

MR. WEBSTER. And looking into it you discovered that, due to the high cost of material brought about by the war, it was not wise as a proposition of economy, to lay a direct line from the United States to Brazil?

Mr. CARLTON. Correct. Brazil and Argentina.

Mr. WEBSTER. Yes. Acting upon what you thought was a public demand for intercommunication between the United States and South America, you then set about to devise a more practical scheme, and as a result you entered into a contract with the Western Telegraph Co., under the terms of which, speaking broadly, that company was to lay a cable from the shores of Brazil to the island of Barbados, and you were to lay a cable from the shores of the United States to the island of Barbados, at which point connection was to be made, and the two companies were to establish a station at that point.

Mr. CARLTON. Correct.

Mr. WEBSTER. Consequently, and in pursuance of that arrangement, you applied to the War Department under the provisions of the rivers and harbors act for a permit to extend your cable under two draw bridges in the southern section of the country.

Mr. CARLTON. No; the Biscayne Bay cable, which was the interior cable, had to go under draw bridges. That was a separate matter. We also made application to the War Department for the right to bring our Miami-Barbados cable up onto the beach, and that was granted by them.

Mr. WEBSTER. The War Department issued you such a permit?

Mr. CARLTON. They granted it.

Mr. WEBSTER. Under the terms of the rivers and harbors act?

Mr. CARLTON. Yes, sir.

Mr. WEBSTER. During the peace conference it became apparent to the Allies and associated powers that many complications would arise over the disposition of the cables taken over by the Allies and associated powers as the result of the war, and consequently it was deemed wise to have an international communications conference.

Mr. CARLTON. Yes, sir.

Mr. WEBSTER. President Wilson called that matter to the attention of Congress and Congress passed an act authorizing the appointment of American delegates to attend that conference.

Mr. CARLTON. Yes, sir.

Mr. WEBSTER. Prior to the convening of that conference the attention of the President—President Wilson—was called to the fact that your company was contemplating the construction of this cable from Miami to Barbados, and he took the position that inasmuch as there was to be an international conference to consider the entire problem of international communication, he did not care to grant you a permit, is that it?

Mr. CARLTON. That is as we understood it.

Mr. WEBSTER. Of course the permit of the War Department under the provisions of the rivers and harbors act contemplated that you had the power to construct the cable, generally speaking?

Mr. CARLTON. I assume that is so.

Mr. WEBSTER. Now, the President withheld an Executive permit. With or without power he refused to act. That is true, is it not?

Mr. CARLTON. Yes.

Mr. WEBSTER. Later your company proceeded to lay its part of the cable. You started at Barbados and laid your cable to a point im-

mediately outside the 3-mile limit, where it is now attached to a buoy in the ocean?

Mr. CARLTON. May I say in just a word, we did not do that in defiance of anybody.

Mr. WEBSTER. Oh, no; I did not say or insinuate that.

Mr. CARLTON. But I want to make it clear that we did it because the cable ship, which was a part of the job, was scheduled to discharge that cable and return to England to do another job. The rate per day was 1,000 pounds, and Mr. Colby demanded of me after this ship had started to lay the cable to Barbados, well outside the 3-mile limit, that we order that cable ship to return to the United States and tie up, either at Newport News or New York, awaiting the pleasure of the State Department. Well, the cable ship—we would not have done it if it had been ours—the cable ship was not under our control; it was a matter of contract, so she proceeded.

Mr. WEBSTER. I did not mean to insinuate at all—

Mr. CARLTON (interposing). I know you did not; but I want to make that point clear.

Mr. WEBSTER (continuing). That you are acting in any other than good faith, but the physical fact is that your company laid a cable from Barbados to a point immediately outside the 3-mile limit, where it is to-day?

Mr. CARLTON. Yes, sir.

Mr. WEBSTER. Attached to a buoy in the sea?

Mr. CARLTON. We hope so.

Mr. WEBSTER. It was your purpose then to extend your line from Miami and make connection at the point where the Barbados end now lies?

Mr. CARLTON. Yes, sir.

Mr. WEBSTER. And by that connection you were to establish through communication with Brazil?

Mr. CARLTON. Yes, sir.

Mr. WEBSTER. Now, the President did not acquiesce in that plan, and passing by details, ordered the Secretary of the Navy to proceed to Miami and prevent your company from laying its cable?

Mr. CARLTON. A letter which the President directed to the Secretary of State instructed the Secretary of State to make certain representations to the Army and Navy as would prevent landing, and that did not come out until the Kellogg hearing. That was dated July 20.

Mr. WEBSTER. But the fact is that the President, acting through the Secretary of the Navy, stopped the construction of the cable by force?

Mr. CARLTON. True.

Mr. WEBSTER. In fact, they sent a vessel down there in charge of Rear Admiral Anderson and stopped your operations?

Mr. CARLTON. True.

Mr. WEBSTER. Now, when that condition came about, the Western Union Co. applied to the District of Columbia court for an injunction against Josephus Daniels, as Secretary of the Navy, enjoining him from interfering with your company in the laying of that cable?

Mr. CARLTON. Correct.

Mr. WEBSTER. That case has been presented to Judge Stafford, and is now held under advisement by him?

Mr. CARLTON. I so understand.

Mr. WEBSTER. The United States of America, as such, was not a party to that suit; it was a suit against Josephus Daniels as Secretary of the Navy. Is that correct?

Mr. CARLTON. Yes.

Mr. WEBSTER. Consequently the Government could ask for no affirmative relief on its part in that litigation, not being a party to the suit. That is correct, is it not?

Mr. TAGGART. That is the fact.

Mr. WEBSTER. Thereafter an action was instituted——

Mr. JONES (interposing). May I interrupt you, Judge?

Mr. WEBSTER. Yes, sir.

Mr. JONES. Can the Government intervene in that action at its pleasure?

Mr. WEBSTER. I presume it could.

Mr. GRAHAM. It was a bill in chancery, wasn't it?

Mr. WEBSTER. Yes.

Mr. JONES. Then they were not precluded from getting into that action if they wanted to?

Mr. WEBSTER. No; I am not trying to make a point of that; I am just trying to get the facts before the committee as to what happened. The fact is that subsequently the United States made application to the District Court for the Southern District of New York for an injunction against the Western Union Co. enjoining it from laying that cable?

Mr. CARLTON. Yes, sir.

Mr. WEBSTER. And that case was presented to Judge Hand?

Mr. CARLTON. Yes, sir.

Mr. WEBSTER. Who decided that the injunction ought not to be granted, resting his decision, broadly upon two general principles: First, that there was no authority inhering in the President of the United States by virtue of his office to grant or withhold permits for the laying of submarine cables. That is correct?

Mr. TAGGART. That is correct.

Mr. WEBSTER. And, secondly, that the Constitution having conferred upon Congress the sole power to regulate commerce with foreign countries among the several States and with the Indian tribes, Congress possesses the power to regulate the landing, the operation, and the removal of submarine cables?

Mr. CARLTON. Yes, sir.

Mr. WEBSTER. And that in the exercise of that power by the passage of the post roads act of July 24, 1866, Congress had authorized the construction of such a line of communication as you were in the act of constructing when you were interrupted, and consequently held that the President had no right to interfere with you, and dismissed the action. That is right, is it?

Mr. TAGGART. He denied the application for a preliminary injunction in his decision. When it went to the circuit court of appeals, the circuit court of appeals affirmed his action and directed the dismissal of the bill later.

Mr. WEBSTER. Then the decision of the circuit court of appeals was brought on for review by the Supreme Court of the United States, the Government being the appellant, and it is now under advisement by the Supreme Court of the United States?

Mr. TAGGART. That is correct.

Mr. WEBSTER. So much for the aspect of the matter as far as the litigation is concerned.

In answer to some questions a moment ago you said that it was your idea that the term "submarine cables" contemplated the laying of cables under the inland waters of the continental United States, did you not?

Mr. CARLTON. Yes, sir.

Mr. WEBSTER. Did you make any objection to the Senate bill now under consideration upon that ground at the time it was being considered in the Senate?

Mr. CARLTON. I think we did not, because we were told that the bill did—it was not intended under the bill to regulate inland cables, but we have since had an opportunity of giving the bill profound consideration, and after conference we have come to the conclusion—for what it is worth—that the bill is susceptible to dealing with inland cables.

Mr. WEBSTER. Well, I think, Mr. Carlton, there can be no room for debate on this proposition, that it was neither Senator Kellogg's purpose nor the purpose of the State Department, nor the purpose of the Senate, to place the regulation of cables under the inland waters of continental United States under the authority of the Executive by this bill.

Mr. CARLTON. I quite agree with you.

Mr. WEBSTER. And it is simply a question of detail, in so wording it as to carry out that purpose and not interfere with rights in continental United States under such inland waters.

Mr. CARLTON. I agree with that.

Mr. WEBSTER. Now, in 1866, on May 5, the Congress granted the privilege or permission to the International Ocean Telegraph Co. to lay certain cables between Key West and Cuba?

Mr. CARLTON. Yes, sir.

Mr. WEBSTER. That was prior to the passage of the post-roads act?

Mr. CARLTON. Yes, sir.

Mr. GRAHAM. I did not get that question, Judge. Do you object to having your last question read?

Mr. WEBSTER. No. Will you read that question, please?

(The reporter read the question, as follows:)

Now, in 1866, on May 5, the Congress granted the privilege or permission to the International Ocean Telegraph Co. to lay certain cables between Key West and Cuba?

Mr. WEBSTER. And your company is now the successor in interest to the International Ocean Telegraph Co.?

Mr. CARLTON. It is.

Mr. WEBSTER. Mr. Carlton, I don't want to ask any question that involves any disclosure of your private affairs, and if the question calls for such information feel perfectly free to refuse to answer.

Mr. CARLTON. We have no private affairs.

Mr. WEBSTER. Would you be kind enough to tell me how the Western Union succeeded to the rights of the International Ocean Telegraph Co. to lay cables from Key West to Cuba?

Mr. CARLTON. Of course, that was long before my day, but I understand that it was partially through stock ownership and partially under an agency contract.

Mr. WEBSTER. In the nature of a lease?

Mr. CARLTON. In the nature of what?

Mr. WEBSTER. In the nature of a lease?

Mr. TAGGART. It is an agency contract.

Mr. CARLTON. It is an agency contract in which we act as the agents of that company.

Mr. WEBSTER. As a matter of fact, you control the company, do you not?

Mr. CARLTON. Oh, entirely.

Mr. WEBSTER. So that it is just a matter of detail in the operation of its affairs whether you take it as agent or lessee?

Mr. CARLTON. Yes.

Mr. WEBSTER. Because you control the policy of the International Ocean Telegraph Co.?

Mr. CARLTON. We are that company.

Mr. WEBSTER. Now, when this bill was originally introduced it provided, speaking generally, that the President of the United States should have the power to prevent the unauthorized landing of submarine cables on the shores of the United States; to provide the terms and conditions under which such cables might be operated, and to bring about the removal of cables which do not conform to the requirements of that act. It was thought, however, that the effect of the act might be harsh unless a reasonable time was given to concerns already operating cables in order that they might apply for and obtain such a license as the bill contemplates. That is correct, is it?

Mr. CARLTON. Yes, sir.

Mr. WEBSTER. The provisions of the original bill provided a period of 30 days, and that was considered too short, and consequently it was extended to 90 days?

Mr. CARLTON. Yes, sir.

Mr. WEBSTER. To meet that situation this language was inserted in the bill: "That any cable now laid within the United States without a license granted by the President, may continue to operate without such license for a period of 90 days from the date of the approval of this act." It was thought by your legal department that inasmuch as the permission to continue to operate was limited to 90 days, by implication the right to continue after that time was denied. Is that correct?

Mr. CARLTON. Yes. I think that is a fair inference.

Mr. WEBSTER. And that since the language employed is "without a license granted by the President," that your license under the act of May 5, 1866, and under the post roads act of the same year, were impliedly repealed after 90 days? Is that correct?

Mr. CARLTON. Yes, sir. You did not say what I think perhaps you intended to say, that the cables between Key West and Habana were laid by a specific congressional grant.

Mr. WEBSTER. I called attention to that.

Mr. CARLTON. Oh, you did? I beg pardon.

Mr. WEBSTER. I say that they granted permission in the bill passed May 5, 1866, to the International Ocean Telegraph Co. to lay certain cables from Key West to Cuba, and pursuant to that two cables were laid?

Mr. CARLTON. Yes, that is right; a specific act of Congress. We understand that is repealed by the passage of this bill.

Mr. WEBSTER. And whatever rights, if any, you may have under the provisions of the post roads act?

Mr. CARLTON. Yes, sir.

Mr. WEBSTER. Now, the suggestion was made through your legal department—I am not advised what individual had the matter in charge—that this bill should be so amended as to obviate any such implied repeal of these acts. Is that correct?

Mr. TAGGART. Yes, sir.

Mr. WEBSTER. And you submitted to the chairman of the committee two amendments which in the opinion of your company meet that situation? The first amendment appears on line 8 of section 1 of the bill after the word "States," inserting "or authority has been granted by Congress." And then, embodying the same idea and giving expression to it so as to avoid any doubt, in line 10 of section 1, after the word "President," is inserted "or without authority granted by Congress."

The purpose of that language, as I understand, was to save to the Western Union Co. whatever rights it may have under the special act of May 5 and under the post roads law. Is that the fact?

Mr. CARLTON. Mr. Taggart, I think, wants to address you on that phase of the bill. You are, of course, correctly interpreting exactly what took place.

Mr. WEBSTER. And these suggestions as to these two amendments came to the committee after the bill had been passed by the Senate?

Mr. CARLTON. That is correct, although—excuse me—we tried to have a similar thing, similar words, introduced in the Senate bill.

Mr. WEBSTER. Are you sure about that, Mr. Carlton?

Mr. CARLTON. Yes; that is correct. We have the correspondence on that, and Senator Kellogg said that they were not prepared to consider any further amendment.

Mr. WEBSTER. I see—

The CHAIRMAN (interposing). May I interrupt you there? Mr. Carlton, wasn't that after you had agreed with Senator Kellogg that the bill was right in the form that was suggested?

Mr. CARLTON. No; although Senator Kellogg had every reason to think that we were in acquiescence with the bill. We did say—Mr. Taggart, who can give you perhaps a more accurate interpretation than I, came down with several amendments, which he discussed with Senator Kellogg, I think the majority of which were accepted by him. He did not mention to Senator Kellogg at that time these words which Mr. Webster has mentioned, but he did state to Senator Kellogg that he reserved the right—or in some more polite phrase—to make certain other suggestions regarding the amendment to the bill.

The next morning in discussing the matter at the office my conversation with Mr. Taggart was like this: "And what did he say about the amendments to lines 8 and 10?" Mr. Taggart said, "Well, I must say that I was so engrossed in discussing other amendments that I did not mention those. I think they are of great importance." I said, "So do I." So we at once telegraphed to Senator Kellogg

before the bill had been presented to the Senate on Monday morning, and the reply came back that Senator Kellogg was not prepared to consider any further amendments.

The CHAIRMAN. The first agreement took place in Washington?

Mr. TAGGART. On Saturday, Saturday afternoon.

The CHAIRMAN. And after Mr. Taggart returned to New York, the amendments were transmitted to Senator Kellogg?

Mr. CARLTON. On Monday morning.

The CHAIRMAN. And then the Senator said they had gone too far with the bill?

Mr. CARLTON. He said he was not prepared to accept any further amendments, although without criticising, the bill was further amended after Monday morning. It was amended on the floor of the Senate.

The CHAIRMAN. The point in question is whether or not the Senate, as represented by Mr. Kellogg, had a right to feel that the Western Union Co. at the discussion stated frankly enough that they were satisfied at that time with the bill as it was then drawn?

Mr. CARLTON. I think that is a fair statement, and my judgment is, although I was not present at the conference, that Senator Kellogg had a right to assume that the Western Union was satisfied with the modifications that he had accepted. Mr. Taggart, being a lawyer, was careful, I suppose, to still retain a little hold by saying that "this is subject to anything else that I may dream of over Sunday." And we did on Monday morning, without loss of time, submit these further amendments which Mr. Taggart inadvertently forgot to mention to Senator Kellogg. But undoubtedly Senator Kellogg's statement is quite correct, if he made that statement.

Mr. WEBSTER. In your statement before the subcommittee of the Senate when this bill was under consideration at the last session of Congress you went on record then, as you have here to-day, as being in favor of some comprehensive and definite scheme regulating the landing and operation of submarine cables?

Mr. CARLTON. Correct.

Mr. WEBSTER. The chief point of difference between your views and the views of Senator Kellogg, the author of the bill, was substantially this—

Mr. CARLTON (interposing). He was not the author; the sponsor.

Mr. WEBSTER. Very well.

Mr. CARLTON. I want to make that point clear.

Mr. WEBSTER. Senator Kellogg's bill contemplated the vesting of this power in the President, who obviously would act through some agency of his own choosing, and you thought that the power should be vested in the Interstate Commerce Commission?

Mr. CARLTON. Yes, sir.

Mr. WEBSTER. And the debate developed this thought, that since the power to regulate cables in foreign countries was almost without exception lodged in the Executive, and that frequently the landing of submarine cables grew out of negotiations between nations, that it was proper to have those powers vested in the President as our diplomatic representative in carrying on negotiations with foreign countries.

Mr. CARLTON. That was the statement, but we never agreed to it, because I think it is pure imagination.

Mr. WEBSTER. But that was the controlling thought that caused adherence to the provision vesting the power in the President.

Mr. CARLTON. You know, Mr. Webster, who grant the cable licenses in England, where they have the largest cable development anywhere in the world; it is the board of trade.

Mr. WEBSTER. But the board of trade is an arm of the British Government and acts by virtue of the executive authority of the Government.

Mr. CARLTON. Right; but it is not the diplomatic arm of the Government.

Mr. WEBSTER. It is the executive arm of the Government dealing with an international problem.

Mr. CARLTON. Yes; but the foreign office, to put it on all fours with our State Department, the foreign office over there would, if they follow the practice here, deal with cable licenses on the theory that it was an international question involving diplomacy. It is not an international question involving diplomacy; it is a question which is between a foreign government and a private company. That does not require the intermediation of the State Department.

Mr. WEBSTER. Oh, not necessarily; and this bill does not require that the State Department shall be the agency selected. This bill confers the authority upon the President, and leaves open to the President any agency which he may select.

Mr. CARLTON. True, but I think the State Department are all ready for its reception.

Mr. WEBSTER. For all that this bill provides to the contrary, the President could designate the three officials you have just mentioned.

Mr. CARLTON. Yes.

Mr. WEBSTER. The Secretary of Commerce, the Postmaster General, and the Secretary of State.

Mr. CARLTON. Yes; he could; but he won't.

Mr. WEBSTER. But I say he has the power.

Mr. CARLTON. I am expressing an opinion.

Mr. WEBSTER. He has the power under this bill to do that if he chooses to exercise it. That is correct, is it not?

Mr. CARLTON. Yes; I quite agree with you.

Mr. WEBSTER. Now; we have no greater reason to anticipate that the President is going to proceed wrongly than we have to assume that he is going to proceed rightly, have we?

Mr. CARLTON. I have never presumed that any President proceeds wrongly. It is not the basis of my argument. I have proceeded on the theory that this is an inheritance of the State Department, and that through the State Department there will be a bureau operating, and I say to you very frankly—and I hope pleasantly—that we have had a very decided shock since Senator Kellogg's bill has been up for discussion before the Senate. We have been shocked by the activity of this bureau of the State Department in trying to jam this bill through ahead of the Supreme Court. Do you wonder that we are just a little bit gun-shy?

Mr. WEBSTER. Well now, Mr. Carlton, since your answer suggests that, let us look into that a little.

If the Supreme Court of the United States, in passing on this litigation now pending before it, should hold that the decision of the

Circuit Court of Appeals and of the district court is correct, and the President has no executive authority with respect to the landing or the operation of cables, because that power under the Constitution is vested solely in the Congress, and Congress in the meantime fails to exercise its power, there will be no authority anywhere to regulate submarine cables, will there?

Mr. CARLTON. There will be the same authority to regulate it as there has been for 52 years.

Mr. WEBSTER. Oh, well, that authority—

Mr. CARLTON (interposing). Unless you delegate it, which you are in the process of doing.

Mr. WEBSTER. Well, I say, Executive authority has been exercised perhaps with two interruptions ever since the administration of Gen. Grant, hasn't it?

Mr. CARLTON. Yes. There were two Presidents that held that there was not, but not very consistently, because, as I said a few minutes ago, there are upward of 20 cables on the shores of the United States that haven't got any presidential license.

Mr. WEBSTER. Oh, well, there are some that have just laid the cables without any authority at all.

Mr. CARLTON. There are some that are purely lawless, but there are many cables that are there without presidential license, but what we believe under authority of Congress.

Mr. WEBSTER. Well, the history of that, briefly, is this: That in 1869 a French company desired to land a cable on the coast of Massachusetts, and the matter was called to the attention of President Grant, and he declined to issue the permit, among other reasons, because the French company was operating in a country that denied to the citizens of this country the power to lay a cable in that country. In other words, that the French company was enjoying a monopoly. Subsequently in his message to Congress he called the attention of the Congress to that situation and he enumerated four propositions which he thought should be the basis of Executive action in matters of that sort, and since that time up to the administration of President Cleveland, whenever the matter has been called to the attention of the Government at all, the Government has acted through the executive department.

Mr. CARLTON. Yes; but with this very important distinction: President Grant said just what you have repeated; some of the other Presidents have said something of the same sort, but the test of the cable license has no longer been a question of monopolistic privilege.

Mr. WEBSTER. Now, I do not want to interrupt you; I consent to that; but just let me go along now with my line of thought. I am not pretending that that policy has been consistently pursued, and that as a result of it there have been no connections established between this country and countries maintaining a monopoly. I know the contrary of that to be the fact.

Mr. CARLTON. You will state that in the course of your statement, will you?

Mr. WEBSTER. I have just stated it.

Mr. CARLTON. Well, I want to bring that out a little bit, when it is convenient to you.

Mr. GRAHAM. Let me ask you a question, Judge Webster. Under what authority did the President act in these cases?

MR. WEBSTER. I will try to develop that in these questions. I am leading up to it.

This matter has been the subject of frequent consideration by Secretaries of State and Attorneys General for the past half century, has it not?

MR. CARLTON. Yes.

MR. WEBSTER. It has been passed upon by Root and Griggs and Frelinghuysen and Wickersham and McReynolds and many others, has it not?

MR. CARLTON. Yes.

MR. WEBSTER. The leading official opinion upon the question was rendered by Acting Attorney General Richards, who at the time was Solicitor General for the Department of Justice and acting in the capacity of Attorney General. In that opinion he took this position, did he not, that it inhered in sovereignty to preserve the territorial integrity of the Nation, and that the President of the United States under his broad powers to see that the laws were faithfully executed, to appoint ministers and ambassadors and all that, that it was his power, in fact it was his duty, to prevent the establishment of intercommunication with this Nation and any foreign nation, in order that we might preserve the integrity of our own country. That was it, wasn't it, speaking generally?

MR. TAGGART. As a general statement that is correct.

MR. WEBSTER. Now, during President Cleveland's administration Secretary Gresham took a contrary view and held that there was no inherent power in the Executive to regulate the landing of submarine cables, and his view, perhaps a little extended, was concurred in by Secretary Olney, and they refused to exercise any power in relation to submarine cables. That is correct, is it not?

MR. CARLTON. I understand so.

MR. WEBSTER. With that interruption, on down through the administrations of McKinley and Roosevelt and Taft and Wilson, the old policy has been resumed and the Executive has assumed authority to act in the premises.

MR. TAGGART. That is true.

MR. WEBSTER. Now, when your controversy arose with the present Secretary of State, Secretary Hughes, he took this position, did he not, that inasmuch as he was acting as the agent of the President, and the power of the President to act had been challenged, and the challenge had been sustained by courts of competent jurisdiction, that he did not feel free to exercise that power until he was assured that he possessed the power?

MR. CARLTON. He did not feel free to consider the matter unless authority was settled.

MR. WEBSTER. Now, Mr. Carlton, without thrashing over—

MR. CARLTON. May I ask you, Mr. Webster, if I am not interfering, will you make it clear that Senator Kellogg's bill was introduced before the litigation began with the Government? Senator Kellogg's bill was introduced in the last Senate, and apparently, in my talk with him he told me, I think in talking with former Secretary Knox and some other men who had given considerable thought to this, that there was a question about it. I think he even quoted Mr. Root, but this bill, the origin of this bill, as I understand it, came from Mr.

Root's own firm, prepared by them and handed to Senator Kellogg. So I do not think that Mr. Root himself was altogether certain as to where the authority lay, and he thought, or his firm thought, it was desirable to clear it up; hence the introduction, or the invitation of Senator Kellogg to introduce the bill. But that was before all of our question of litigation.

Mr. WEBSTER. That is my understanding of the matter.

Mr. SWEET. For the purposes of the record, about what time was that bill introduced, the original Kellogg bill?

Mr. WEBSTER. I haven't it before me.

Mr. NEWTON. Senate file 4301—they conducted hearings on it commencing December 3, 1920.

Mr. WEBSTER. It was considered early in 1920, I think, Mr. Newton. I know it was introduced long before this litigation arose between the Government and the Western Union Co.

Mr. DENISON. You said, Mr. Carlton—I mention this parenthetically in view of your statement just now—did I understand you to say it was prepared by Mr. Root's firm?

Mr. CARLTON. So Mr. Kellogg told me, that it was prepared by Mr. Root's firm, who act for the All-American Cables. Isn't that correct? Isn't your father still included in the firm, Mr. Root? I speak of Mr. Root's firm; perhaps I should say more specifically Mr. Root, jr., who represents the All-American Cables. They prepared the bill, as I recall it Senator Kellogg told me, and asked him to introduce it.

Mr. DENISON. Well, we understand that this bill was introduced at the request of the All-American Co.

Mr. CARLTON. Yes, sir; that is as I understand it. Senator Kellogg himself stated before the Senate when he introduced it: "This bill I introduce by request. I do not know whether I shall pursue it or not." I think those are almost his very words—something to that effect.

The CHAIRMAN. If everybody will suspend a minute I would like to read from the Congressional Record of April 26, page 606, in which Mr. Kellogg says:

The bill was introduced in the spring of 1920, and at the beginning of the last session of Congress the Interstate Commerce Committee authorized a subcommittee to hold hearings and investigate the subject and to report a bill to the Senate. Extensive hearings were held, which have been printed.

Mr. CARLTON. Yes; if you will refer to the date when he introduced the bill you will see that he said "This bill has been introduced by request, and I don't know whether I am going to pursue it or not."

The CHAIRMAN. I will try to find that.

Mr. CARLTON. You will find that in the Record.

Mr. WEBSTER. Without harking back to the issues that were threshed out in the Senate with respect to whether the authority should be vested in the President or should be delegated to the Interstate Commerce Commission, the immediate cause of this hearing was the proposed amendments to which I have already referred, and those amendments present this question: Whether it shall be the policy of the Congress to repeal whatever legislation there may be upon the books relative to the landing of submarine cables on the shores of the United States, and to vest the entire authority in the President? Is that right?

Mr. CARLTON. That is what it means.

Mr. WEBSTER. And you are naturally concerned because you are claiming important rights under special acts of Congress and under the post-roads law.

Mr. CARLTON. But in favor of the principle.

Mr. WEBSTER. In favor of the principle of establishing a uniform system for regulating the landing and operation of all cables.

Mr. CARLTON. Correct.

Mr. WEBSTER. Now, may we not confine our investigations to this one question: Should this bill be so amended as to preserve to your company whatever rights it may have under the special acts and under the general legislation of Congress, or should those acts be repealed and the entire power in the premises vested in the President? Isn't that it?

Mr. TAGGART. That is correct.

Mr. CARLTON. Yes; of course, we have made the point that we would like you to consider the authority. We would like you to consider a substitution of authority, to exercise the authority in the commission rather than in the individual President.

Mr. WEBSTER. Yes; that is a matter of executive detail, but the principle involved is whether or not the authority and control shall by an act of Congress be vested in the Chief Executive, acting through agencies of his own choosing, or whether we shall make an exception, preserving rights that have attached under the special acts and the post roads law.

Have you investigated the question, Mr. Carlton, enough to know whether or not there is not a provision in all of these special acts to the effect that the right to amend, alter, or repeal is expressly reserved? That is a fact, isn't it?

Mr. TAGGART. I think that is true as to all of them.

Mr. WEBSTER. So that it is not, then, a question of power.

Mr. TAGGART. Not at all.

Mr. WEBSTER. It is a question altogether of policy.

Mr. TAGGART. Exactly.

Mr. WEBSTER. That is all.

Mr. SWEET. I would like to ask a general question, if Judge Webster is through.

I say this to Mr. Carlton in the presence of his counsel. Are there any other amendments to Senate 535 that you desire to suggest at this time. The amendments proposed by Mr. Webster cover, as I understand, your objections to the bill?

Mr. TAGGART. We have prepared a modified amendment in case the bill is left with the power vested in the President, and we have also prepared a substitute for section 1, which provides for the direct grant to the three Secretaries, and those are all, but we thought it would put it in better form, on careful consideration of it, to present the amendment to the present section 1 as one amendment, just one amendment, which we are ready to consent to at any time.

Mr. SWEET. But it may be stated generally that with the two amendments suggested by Judge Webster you are satisfied with the bill?

Mr. TAGGART. Yes, sir.

Mr. WEBSTER. There is just one further thought, Mr. Chairman, if I may have a minute more. It arises out of the questions asked by Mr. Barkley with respect to the jurisdiction over the territorial waters of

the United States—by the territorial waters I mean waters within the 3-mile limit.

There is no longer any room for dispute, in view of the decisions of the Supreme Court of the United States, that while the power of the States for some purposes may extend over the territorial waters upon the shores of the State, such power is always subject to the paramount control of Congress.

Mr. TAGGART. There is no question about that.

Mr. WEBSTER. And when the Congress invades the field the paramount authority of Congress overrides State authority. There is no question about that.

Mr. TAGGART. We don't raise any question in regard to that.

Mr. DENISON. Section 3, Mr. Carlton, says that the President is empowered to prevent the landing of any cable which is landed in violation of this act. Does that landing refer to your case particularly, or do you know of any other cable that comes under this provision?

Mr. CARLTON. No; there is no other cable. There is no other cable about to be landed on these shores.

Mr. TAGGART. Our amendment—I will be perfectly frank—the amendment which I wish to present with respect to that covers not only our rights under the special acts of Congress and the general acts under the Post Roads, but it also covers the peculiar situation under the Barbadoes case.

Mr. DENISON. I was going to say, if you were going to try to protect your interests at all, it ought to be broad enough to cover that phase.

Mr. TAGGART. That is the reason that I am proposing the one amendment to cover that whole situation in just simply a proviso to section 1, and which I would like to explain when I have an opportunity.

Mr. HOCH. I want to ask Mr. Taggart just one question: Directing your attention to the proviso in section 2, beginning on line 9, page 2, that seems to be a proviso, a saving clause preserving to the Interstate Commerce Commission certain powers, and I direct your attention to the word "transmission." In your judgment, does the word "transmission" cover all powers held by the Interstate Commerce Commission relative to the operation of cables?

Mr. TAGGART. Practically all with respect to the details of operation. You will find in the present act that transmission of messages to and from foreign countries is the manner in which the jurisdiction is granted to the Interstate Commerce Commission, and therefore that word was used.

Mr. HOCH. That is broad enough, then, in your judgment, to save to the commission any powers it may have over service or over rates or anything of that sort?

Mr. TAGGART. Practices, classifications, and regulations, which by section 15 they are given full control to correct and direct and to modify, and so on.

The CHAIRMAN. Gentlemen, will the members of the committee please note, and the witnesses in interest, that this hearing will go on to-morrow morning and the session will begin promptly at 10 o'clock.

(Whereupon, at 1 o'clock p. m., the committee adjourned till 10 o'clock a. m., Wednesday, May 11, 1921.)

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES,  
*Wednesday, May 11, 1921.*

The committee met at 10 o'clock a. m., Hon. Samuel E. Winslow (chairman) presiding.

The CHAIRMAN. Mr. Carlton, I believe you had finished your direct testimony and that you are now ready to subject yourself to the inquiries of the committee.

Mr. CARLTON. Are there any questions, Mr. Chairman?

The CHAIRMAN. There appear to be no questions at this time, but when some of the other members come in later, it may be they will want to recall you, and if that is agreeable we will proceed with the next witness. Is there anybody else connected with your company, Mr. Taggart or anyone else, who desires to be heard at this time, so that we may finish up that phase of the matter?

Mr. CARLTON. Mr. Taggart, I think, may have something to say.

**STATEMENT OF MR. RUSH TAGGART, VICE PRESIDENT AND  
GENERAL COUNSEL, WESTERN UNION TELEGRAPH CO.**

Mr. TAGGART. Mr. Chairman, the questions in this matter have narrowed themselves very much in the light of Mr. Webster's questions to Mr. Carlton, and there remain questions of the policy of the bill and the form of the bill to which I will generally address myself, but before doing so I want to supplement some things which were presented in Mr. Carlton's testimony at this time before taking up those questions and observations that I may make respecting the policy and form of the bill.

First, I want to call attention and submit the Congressional Record of April 29, 1920, and the remarks of Senator Kellogg in introducing Senate bill 4301 on the 29th of April. I want to read just a few portions from pages 6839 and 6840, in which I think Senator Kellogg was expressing the purpose of the introduction of this bill.

Mr. MAPES. That date must be 1920.

Mr. TAGGART. 1920; yes, sir.

He opens his introduction as follows:

Mr. President, I send to the desk a bill to prevent the unauthorized landing of submarine cables in the United States, and I ask the privilege of making a few remarks explaining the measure.

I introduce the bill by request. I am not prepared to say that I indorse it or will support it, but I do think the circumstances surrounding the cable situation in South America should receive the attention of the Senate, and that the Committee on Interstate Commerce ought to have a hearing and carefully consider this subject.

The bill proposes to give the Secretary of State the power to issue licenses for cable landings. This power has been exercised, but some question has been raised as to the right of the Secretary of State to grant such licenses upon conditions which will protect the United States. That is all the bill proposes to do.

But, Mr. President, there is a situation in South America which is the cause of this bill being prepared and introduced which I think the Senate should understand. The All-American Cable Co. is an American line. It owns a line of cables from New York to Cuba, from Cuba to Panama, and down the west coast of South America to Valparaiso, across from Valparaiso to Montevideo, and two lines from Montevideo to places in Brazil, Rio Janeiro, and Santos. It also owns the cable line up the coast of Mexico and to Galveston. This is the only all-American cable line to South America.

Then he goes on and describes the situation of an English company and further states:

The line to be built by the Western Union proposes to run from Barbados to Miami, Fla., and it is a question whether the Secretary of State has authority to place conditions upon the landing rights of the Western Union Co.

Reflecting, as I think I may fairly say, in view of the statements of Senator Kellogg, the sentiments and purposes of the original author of the bill.

The bill itself is somewhat illuminating and is very brief and I wish to have both appear in the record, but I will only call attention to the fact that there is first a general prohibition in section 1 against any person landing any submarine cable in the United States without a written license from the Secretary of State.

Section 2, the Secretary of State may withhold, in his discretion, such license.

Then there is section 3, first, as it appears in this bill, that the President is empowered to prevent the landing of any cable about to be landed in violation of the provisions of this act.

I think we are justified in inferring that while it is entitled "An act to prevent unauthorized landing of submarine cables" it should be entitled "to prevent the unauthorized landing of a particular cable," rather than of all cables.

In that connection, I beg to call attention to the fact that there appears in the bill filed in the New York suit, a copy of a letter headed "The White House, Washington, the 20th of July, 1920," which for the first time was brought to the knowledge of the Western Union Telegraph Co. when this bill was filed. It is addressed: "My dear Secretary: I have your letter of July 17."

Mr. GRAHAM. Whom was it written to?

Mr. TAGGART. It was written to the Secretary of State, Bainbridge Colby.

I have your letter of July 17 about the landing of a cable at Miami, Fla., and in reply suggest that we postpone such questions until the international conference on communications has discussed the whole matter, and we have before us a general plan by which we can shape our various decisions in matters of this sort.

I beg that you will seek the cooperation of the Departments of War, Navy, and Justice in preventing the Western Union Telegraph Co. from landing a cable in defiance of the law and request that you show them this letter as their authorization to comply.

Cordially and faithfully, yours,

WOODROW WILSON.

This is addressed to Hon. Bainbridge Colby.

In that connection and on that same general subject I beg to offer from the Senate record, and I will have copies handed to the stenographer to be carried in this record, first, the permit of the Mexican Telegraph Co.

Mr. SANDERS. Will you kindly give the page?

Mr. TAGGART. It is at page 16 and begins, "Permit of Mexican Telegraph Co. and Central and South American Telegraph Co., dated February 11, 1907," under which the cables of that company, now the All-America, are landed on the shores of the United States, and, as I say, I will hand a copy of this and will not undertake to read it, but I call attention to the fact that in that there is absolutely no condi-

tion or restriction with respect to monopolies of any form or character.

(The statement referred to follows:)

PERMIT OF MEXICAN TELEGRAPH CO. AND CENTRAL & SOUTH AMERICAN TELEGRAPH Co., DATED FEBRUARY 11, 1907.

In the matter of the application of the Mexican Telegraph Co. and of the Central & South American Telegraph Co. for permission to land, maintain, and operate a cable or cables between the city of New York and the Isthmian Canal Zone with an intermediate landing on the Government reservation near Guantanamo, in the island of Cuba, dated February 11, 1907.

The President having duly considered the aforesaid application of the Mexican Telegraph Co. and of the Central & South American Telegraph Co. dated February 11, 1907, hereby consents that the said Mexican Telegraph Co. and the Central & South American Telegraph Co. may jointly lay, construct, land, maintain, and operate a telegraph line of cables starting from the city of New York or some suitable point adjacent thereto, which will connect the said city of New York with the Isthmian Canal Zone.

And the President hereby further consents that the Central & South American Telegraph Co. may lay, construct, land, maintain, and operate telegraphic lines of cables which, having started at or near the city of New York, shall land near Windward Point on the Government reservation of the United States near Guantanamo, in the island of Cuba (such landing point to be connected by a heavy bay cable with Fishermans Point, where the company is granted permission to erect and maintain station buildings, the tracts for the same to be selected by the Secretary of War) and at a point on the Isthmus of Panama within the jurisdiction of the United States.

And further consents, permission being hereby granted, to make a connection with said cable or cables, by means of an insulated cable or cables, or by telegraph wires upon a line of posts to be established by said company upon a suitable route within the limits of the Canal Zone, to be selected by the company, with the approval of the chief engineer of the Canal Commission, between the landing point and this company's station on the Atlantic side of said Canal Zone, and its station and cable system on the Pacific side of said Canal Zone: *Provided, however*, That said line is not to be used for local messages upon the Isthmus: *And provided further*, That where private lands are crossed by said cables or line, compensation shall be made by said company according to law.

A revocable license for the construction of such wires and posts or cables upon the public lands in said Canal Zone is hereby granted, subject to the condition that the cable or telegraph wires constructed by the company upon such public lands shall be moved or shifted by the company, at the expense of the company, whenever requested by the chief engineer of the Isthmian Canal Commission, with the approval of the Secretary of War.

Said companies are authorized to use two wires belonging to the Panama Railroad Co., and strung on its poles, between Colon and Panama for a period of 18 months, beginning June 15, 1907, for which said wires the companies shall pay \$4,500, payable in equal payments of \$1,500 each six months in advance; said wires not to be used for local business between Colon and Panama.

It is a condition of the granting of the said consent that each of the said companies first file with their said application a written acceptance by each of said companies of the terms and conditions upon which said consent is given, to wit:

1. That the said companies' cables shall touch at no other point than that near Guantanamo on the way from the United States to the Isthmian Canal Zone. That at least single line of cable shall be established between the city of New York and the Isthmian Canal Zone touching at the Government reservation near Guantanamo before the 1st of January, 1908, force majeure excepted.

2. That the rates to be charged for commercial messages over the said cable shall be reasonable; that the rate for such commercial messages between the United States and the companies' offices in the Canal Zone over said cables shall not exceed 50 cents per word. The rate for commercial messages between the United States and the companies' office near Guantanamo shall not exceed 20 cents per word; and the rate for commercial messages between the companies' office near Guantanamo and their offices in the Canal Zone shall not

exceed 30 cents per word. That after five years the maximum rates for commercial messages shall be reduced 20 per cent.

And the said companies shall accept from the United States Government and departments thereof, its officers, and insular or territorial officers and governments upon the routes of such cables for their official messages not to exceed one-half of the above rates for the first year.

When the said cable has been opened for public business for a period of one year, and at the end of each successive year thereafter, the Postmaster General of the United States shall have the power to fix the rates to be charged for such official messages during the next succeeding year.

3. That the official messages mentioned in article 2 shall have priority over all other business.

4. That the Government of the United States shall have authority to assume full control of the said cable or cables during war (including grave civil disturbance) or when war is threatened.

5. That all contracts entered into by the said companies with foreign Governments for the transmission of messages by the above-described cables shall be suspended when the United States is engaged in war so far as the President or Congress shall elect.

6. That the United States shall have authority to sever, at discretion, all branches which may be connected with the main cable line aforesaid during war or a threatened war.

7. That the operators and employees of said companies (above the grade of unskilled labor) after said cables shall have been laid shall be exclusively American citizens if the same can be obtained.

8. That the citizens of the United States and of its possessions shall stand on an equal footing, as regards the messages over said companies' lines, with citizens or subjects of any other country with which said cables may connect.

9. That the said cables shall be capable of an effective speed of transmission over the main route from a point in or near the city of New York to the Isthmian Canal Zone of not less than 20 words of 5 letters each a minute, which said companies agree to make every effort to maintain.

10. That the cable laid shall be of the best manufacture.

11. That ample repair service for said cables shall be maintained, and during time of war the said companies shall maintain a repair ship flying the American flag.

12. That the line shall be kept open for daily business and all messages in the order of priority heretofore provided for shall be transmitted according to the time of receipt.

13. That no liability shall be assumed by the Government of the United States by virtue of any control or censorship which it may exercise over said line in the event of war or civil disturbance or under conditions 4 and 6 above set forth, so far as messages directly connected with the war are concerned, but as to the stoppage or interruption of other business of the said companies the compensation therefor to be paid by the United States to said companies shall be determined under the general law.

14. By the grant of this permission the United States Government does not insure or indemnify said companies against any landing rights claimed to exist in favor of any company or companies in respect to any territory within the jurisdiction of the United States.

15. That the consent hereby granted shall be subject to any future action by Congress, affirming, revoking, or modifying wholly or in part the said conditions and terms on which this consent is given.

The acceptance of the terms and conditions upon which this consent is given shall be evidenced by a copy of a resolution of the board of directors of the said telegraph companies, under the respective seals of said companies, to be filed with the Secretary of War of the United States.

THEODORE ROOSEVELT.

I offer also from page 23 of that record the permit to the Western Union Telegraph Co., dated April 16, 1917, signed by Woodrow Wilson, relating to the three cables from Key West to Cojimar, and in explanation of that permit, let me say that at that time the Western Union Telegraph Co., which was theretofore operating the two then existing cables, was laying a new cable from Key West to

Cojimar to meet the growing business. In connection with the laying of this additional cable, the landing place of the two Key West cables, as I will call them, under the act of May 5, 1866, the special act, was to be changed a few squares in the city of Key West, and application was made to the Secretary of War under the harbor act of 1899 with respect to that change of landing place. In connection therewith the Secretary of War also included those two cables and this new cable of the Western Union, and forwarded, under the then practice of the Secretary of War, to the President of the United States for his sanction and approval, and in that you will see that there was nothing respecting monopolies.

(The statement referred to follows:)

PERMIT OF WESTERN UNION TELEGRAPH CO., DATED APRIL 16, 1917.

THE WHITE HOUSE,  
April 16, 1917.

In the matter of the application of the Western Union Telegraph Co., of New York City, for permission to land, maintain, and operate cables connecting Key West, Fla., and Cojimar, Cuba.

The President, having duly considered the application of the Western Union Telegraph Co. for permission to lay three submarine cables in Key West Harbor, Fla., and to land them at Whitehead Street, Key West, Fla., involving a physical connection between the United States and a point outside the territorial jurisdiction of the United States, to wit, Cojimar, Cuba, hereby grants authority for laying, landing, and maintaining the said cables, subject to the conditions of the foregoing permit of the Secretary of War, and subject also to the following express conditions:

1. That the Government of the United States, its departments, officers, and agents, shall have priority for their official messages over all outgoing messages and over all incoming messages, except those of the Government of Cuba.

2. That, to the extent it may do so consistently with the sovereignty of Cuba, the United States shall have authority to assume full control of the said cables during war or when war is threatened.

3. That all contracts entered into by the said company with foreign Governments, except the Government of Cuba, for the transmission of messages by the said cables shall be null and void when the United States is engaged in war, so far as the President or Congress shall elect.

4. That no liability shall be assumed by the Government of the United States by reason of any control or censorship which it may exercise over said lines in the event of war or civil disturbance.

5. That the consent hereby granted shall be subject to any future action of the President or of Congress, affirming, revoking, or modifying, wholly or in part, the said conditions and terms upon which the consent is given, and subject also to any conventions between the United States and Cuba applicable to said cable lines.

6. That the Executive instrument dated January 13, 1917, authorizing said company to lay, land, and maintain a submarine cable in Key West Harbor, Fla., is hereby revoked.

WOODROW WILSON.

Further, I desire to call attention to the permit granted on the 22d of June, 1920, to the All-America Cables—that was just one month before the letter which I have read to you from Mr. Wilson—for landing and operating cable or cables between Cristobal, Canal Zone, and Cartagena and other ports of Colombia, at page 27 of this record, copy of which will be filed with the stenographer and in which there is no reference whatever to cable monopolies where the landing was to be or in other countries.

(The statement referred to follows:)

PERMIT OF ALL-AMERICA CABLES (INC.), DATED JUNE 22, 1920.

In the matter of the application of the All-America Cables (Inc.), for permission to land and operate a cable or cables between Cristobal, Canal Zone, and Cartagena and other ports of Colombia.

The President hereby consents that the All-America Cables (Inc.), may lay, construct, land, maintain, and operate a telegraphic line of cables starting from the town of Cristobal, Canal Zone, and connecting with Cartagena and other ports on the north or Caribbean coast of the United States of Colombia.

And the President hereby grants permission to the said company to make a connection with said cable or cables and the company's station on the Atlantic side of said Canal Zone upon a suitable route or routes to be selected by the company, with the approval of the governor of the Panama Canal, and subject to such conditions regarding the construction and maintenance of said connections as to the governor of the Panama Canal may seem proper to safeguard the interests of the Panama Canal; and the said company may utilize the transisthmian line or lines now being operated by the company in connection with its present cable lines, subject to the conditions prescribed in the existing agreements between the cable company and the governor of the Panama Canal. The cable lines constructed by the company in the Canal Zone shall be moved or shifted by the company at its expense whenever requested by the governor of the Panama Canal.

This permit is granted upon the condition that the said company first file with the Secretary of War its written acceptance of the terms and conditions upon which this permit is given, to wit:

1. That at least a single line of cable shall be established between Cristobal, Canal Zone, and Cartagena and the other ports in Colombia, above mentioned.

2. That the rates to be charged for commercial messages over the said cable shall be reasonable, and shall not exceed 20 cents per word.

And the said company shall accept from the United States Government and departments thereof, including the Panama Canal and the Panama Railroad Co., its officers, and insular or territorial officers and governments upon the routes of such cables for their official messages, not to exceed one-half of the commercial rates established by the company.

When the said cable has been opened for public business for a period of one year, and at the end of each successive year thereafter, the governor of the Panama Canal, with the approval of the Secretary of War, shall have the power to fix the rates to be charged for such official messages during the next succeeding year.

3. That the official messages mentioned in paragraph No. 2 shall have priority over all other business.

4. That the Government of the United States shall have authority to assume full control of the said cable or cables during war (including civil disturbances) or when war is threatened.

5. That all contracts entered into by the said company with foreign Governments for the transmission of messages by the above-described cables shall be suspended when the United States is engaged in war so far as the President or Congress shall elect.

6. That the United States shall have authority to sever, at their discretion, all branches which may be connected with the main cable line aforesaid during war or threatened war.

7. That the operators and employees of said company above the grade of unskilled labor, after said cables shall have been laid, shall be exclusively American citizens, if the same can be obtained.

8. That the citizens of the United States and of its possessions shall stand on an equal footing as regards the messages over said company's lines with citizens or subjects of any other country with which said cables connect.

9. That the said cables shall be capable of an effective speed of transmission over the main route from a point in or near Cristobal, Canal Zone, of not less than 20 words of 5 letters each a minute, which said company agrees to make every effort to maintain.

10. That the cable laid shall be of the best manufacture.

11. That ample repair service for said cables shall be maintained, and during time of war the said company shall maintain a repair ship flying the American flag.

12. That the line shall be kept open for daily business, and all messages in the order of priority heretofore provided for shall be transmitted according to the time of receipt.

13. That no liability shall be assumed by the Government of the United States by virtue of any control or censorship which it may exercise over said line in the event of war or civil disturbance or under conditions 4 and 6 above set forth, so far as messages directly connected with the war are concerned, but as to stoppage or interruption of other business of the said company the compensation therefore to be paid by the United States to said company shall be determined under the general law.

14. That the permit hereby granted shall be subject to any future action by Congress, affirming, revoking, or modifying wholly or in part the said conditions and terms under which this permit is given.

The acceptance of the terms and conditions upon which this permit is given shall be evidenced by a copy of a resolution of the board of directors of the said All-American Cables (Inc.), under the seal of said company, filed with the Secretary of War of the United States.

WOODROW WILSON.

THE WHITE HOUSE, June 22, 1920.

Further, the alleged permit at page 29 of this record issued by the Secretary of State, under authorization and signed by the President, and which the Western Union Telegraph Co. advised the Secretary of State it would not accept, which purported to cancel the permits for the three cables from Key West to Cojimar and to substitute conditions, the first of which I will read for your information because it bears upon this matter, and you will see what they sought to impose upon the Western Union Telegraph Co. with respect to this particular cable which we think this legislation was originally aimed at.

Mr. MERRITT. What is the date of that?

Mr. TAGGART. November 20, 1920, just six months from the All-America Cables permit which I have called your attention to.

Mr. RAYBURN. May I ask you a question, although probably you have covered it, because I think you were discussing it when I came in: Is there any provision in the license to the All-America Cables with reference to monopolies?

Mr. TAGGART. I have just said there was not. I have so stated to the committee, calling attention to and filing the copies.

I now want to call your attention to this because of what is contained in it, and then leave the matter with that. This is a substituted condition which is put in with the old conditions and some others, but this is the material one:

1. That the permittee, its successors or assigns, or any cable with which it connects, has not and shall not receive any exclusive privilege or concession from any foreign Government which excludes any other person, partnership, joint-stock company, or corporation organized in the United States from a like privilege of landing on such foreign shores and connecting freely with the inland telegraphic system of that country and operating therein, and that the proposed line is not a link and shall not have any connection with a foreign cable system which enjoys in Brazil or elsewhere rights of entry, connection, or operation denied American cable companies.

Now, I think those facts should be taken into consideration, and therefore I take the time this morning to bring them to the attention of the committee in connection with what was stated yesterday with respect to the general facts surrounding this situation.

(The statement referred to follows:)

PERMIT OF WESTERN UNION TELEGRAPH CO., DATED NOVEMBER 20, 1920.

THE WHITE HOUSE,  
November 20, 1920.

In the matter of the application of the Western Union Telegraph Co., of New York, for permission to land, maintain, and operate cables connecting Key West, Fla., and Cojimar, Cuba.

The President of the United States, having duly considered the application of the Western Union Telegraph Co. for permission to lay three submarine cables in Key West Harbor, Fla., and to land them at White Head Street, Key West, Fla., involving a physical connection between the United States and a point outside the territorial jurisdiction of the United States, to wit, Cojimar, Cuba, hereby grants authority for laying, landing, and maintaining the said cables subject to the conditions stated in the permit issued by the Secretary of War under date of April 3, 1917, authorizing the company to lay these cables in Key West Harbor, Fla.; to the conditions set forth below; to any further condition or conditions which the President or the Congress of the United States may hereafter see fit to impose, and subject also to any action by the President or by the Congress of the United States revoking or modifying in whole or in part the conditions and terms upon which this consent is granted.

#### CONDITIONS.

1. That the permittee, its successors or assigns, or any cable with which it connects, has not and shall not receive any exclusive privilege or concession from any foreign Government which excludes any other person, partnership, joint-stock company, or corporation organized in the United States from a like privilege of landing on such foreign shores and connecting freely with the inland telegraph system of that country and operating therein, and that the proposed line is not a link in and shall not have any connection with a foreign cable system which enjoys in Brazil or elsewhere rights of entry, connection, or operation denied American cable companies.

2. That the Government of the United States, its departments, officers, and agents, shall have priority for their official messages over all outgoing messages, and over all incoming messages except those of the Government of Cuba.

3. That the permittee shall not for the purpose of regulating rates consolidate, amalgamate, or combine with any other cable or telegraph line and shall not become a party to any contract, combination, or arrangement having as one of its purposes the exclusion of any American cable system from any field of operation.

4. That charges to the Government of the United States shall not be at a higher rate than to any other Government, and those charges, as well as the charges to the general public, shall be fair and reasonable.

5. That the Government of the United States shall be entitled to the same or similar privileges as may by law, regulation, agreement, or otherwise be granted to any foreign Government.

6. That all contracts for the transmission of messages by the said cable entered into by the said company with foreign Governments except the Government of Cuba, may be suspended and rendered inoperative by the President or by Congress for the whole or any part of the period during which the United States is engaged in war.

7. That no liability shall be incurred by the Government of the United States by reason of any control or censorship which it may exercise over said line in the event of war or civil disturbance.

8. That citizens of the United States shall stand on the same footing as regards privileges with the citizens of Cuba or of any other country.

9. That the United States shall have authority to assume full control of the said cables during war or when war is threatened, in so far as it may do so consistently with the sovereign rights of Cuba.

10. That messages shall have precedence in the following order:

- A. Official messages to, from, or by the Government.
- B. Telegraphic business.
- C. General business.

11. That the lines shall be kept open for daily business, and all messages in the above order shall be transmitted according to the time of receipt.

12. That the permittee shall not lease, transfer, or assign the cable lines laid under this permit or either of them to any person, partnership, joint stock company, or corporation without the written authorization of the President.

13. That the permittee shall not employ the cable lines for the transmission of messages for transit from the United States to points situated outside of Cuba nor shall it transmit messages in transit from points outside of Cuba to the United States over these lines without written authorization from the President.

The Executive permit issued to the said company under date of April 16, 1917, to land the said three submarine cables in Key West Harbor, Fla., is hereby revoked.

WOODROW WILSON.

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PERMIT OF WESTERN UNION TELEGRAPH CO., DATED FEBRUARY 28, 1916.

The President, having considered the application of the Western Union Telegraph Co., for permission to land three submarine cables at the foot of Fairview Avenue, Rockaway Beach, Long Island, N. Y., involving a new shore connection for cables now landed at Manhattan Beach, and a physical connection between the United States and a foreign country, hereby gives authority for laying and maintaining the said cables, subject to the conditions of the foregoing permit of the Secretary of War and to the further condition that the consent hereby granted shall also be subject to any action by the Congress of the United States affirming, revoking, or modifying in whole, or in part, the conditions and terms upon which this consent is granted.

WOODROW WILSON.

THE WHITE HOUSE,  
February 28, 1916.

We come now, as I have stated in opening, to a consideration of two questions. This bill has been in terms enlarged considerably. The first question is the question of the general policy that underlies this bill. Mr. Carlton yesterday stated the policy of the telegraph company with respect to it, that speaking generally, the company was willing to accept a bill that secured reasonable and just regulations of cable landings.

I might digress, without any intention whatever of attacking the policy that underlies this bill, by making some remarks that are more personal than otherwise as to what seems to me to be a wise policy with respect to this matter, in view of the history of this situation, which I have given considerable attention to during the past five or six months, and the general effect of legislation of this sort.

As I understand the cable business, the cable as an instrumentality, and what is done over it, it is primarily and practically universally an instrumentality of commerce and nothing else, just as a ship is an instrumentality of commerce; and what is transmitted over it, under the decisions of the Supreme Court of the United States, in reality, is nothing but intercourse with foreign nations, as Chief Justice Marshall defined it in the great case of Gibbons against Ogden. It is commercial intercourse, one form of such intercourse, and nothing else, and therefore what you are dealing with here as the subject matter of this bill is a question of commercial intercourse with foreign nations and nothing else, in reality.

Further, it would seem to me that as a question of economics, good policy, and good living with the nations of the world which are being brought by this instrumentality to understand each other better than they ever understood each other before, instead of putting any obstacle or anything that might in any of its operations become an obstacle to

this communication back and forth between the nations, whereby better understandings will be promoted and created, it would be well to encourage everything of that sort rather than to discourage it.

As was stated yesterday, this sort of instrumentality for intercourse of this character depends, as far as this country is concerned, upon private initiative, which, in taking that initiative, seeks profit, seeks advantage, it is true, but it is profit which is coupled with the essential condition that that private initiative and that private instrumentality shall perform an obligation to the public and shall serve the public in those things for which the public desires to be served. Now, it seems to me that is fundamental.

There is another phase in this case in that respect that I may call your attention to very briefly, and that is that while the initiative from abroad with respect to such enterprise in the past has been more or less governmental, either in the way of subsidies or a direct governmental interference and action, nothing of that sort is likely to be in the future, so far as the Governments of those countries are concerned from which anything of that sort can come, for the reason that those Governments which were likely to do anything of that sort are impoverished as a result of the war and are not likely to be thus coming to our shores. So that this bill in its future application and operation is likely to be effective as against domestic enterprises instead of foreign enterprises. So that whatever may have been the situation in the past with respect to protection and all that sort of thing, if there is anything in that, which I do not believe there is, as was demonstrated by Mr. Carlton yesterday, that has passed, and the question, it seems to me, is to be considered on this line of policy as addressed to what will be the effect of this bill as presented upon domestic investors proceeding to go into an operation of this sort.

Whatever creates an uncertainty as to what the conditions will be under which such an operation is to be carried out creates a difficulty, I think I may say as a truism, in securing capital for investment in a matter of this sort; and if you take this bill, with all its provisions, and you take it with you to an investor proposing to interest him in capital for a new cable and you call his attention to its provisions that the President, through the Secretary of State, if you please, or through two or three Secretaries, may impose such conditions as he or they please, is it going to help or is it going to hinder? That is the question with respect to this question of policy. Is it going to advance the interest of the promoter of an enterprise of this sort in securing that capital, and unless he has that capital, practically, he can not go into the question of ordering a cable and embarking upon a project of this sort and upon the expense of surveys of the oceans in order to know where such cable can be laid.

Now, take the provisions of the bill. There is a prohibition absolutely against coming upon our shores without such a permit, and as to the difficulties of securing the permit, you have the experiences of the past, and everything of that sort in that connection.

You have, further, the provision, to which I call your attention, in section 4, and which was in the original bill as presented by Senator Kellogg over a year ago, that if any attempt is made to land or any attempt to operate any such cable, a \$5,000 fine and imprison-

Mr. TAGGART. Just as there was abroad in time of war, but we understand that there is no censorship now in time of peace abroad any more than there is in the United States.

Mr. GRAHAM. Is there any in South American countries?

Mr. TAGGART. I think not. Am I right about that, Mr. Carlton?

Mr. CARLTON. I would like to supplement that, if I may.

Mr. GRAHAM. That is the principal question in my mind, so far as I am concerned.

Mr. CARLTON. That question was asked before Senator Kellogg's subcommittee and there was a great deal of time spent on it; it is a very important question, and personally, I am very glad, indeed, it has been brought up.

The agitation with respect to the disclosure of messages in and out of the United States to the detriment of American trade and commerce has been very widely distributed and very widely encouraged, so far as South America is concerned, by my friends of the All-America Co. I do not criticize them for that, but I am perfectly willing to look the facts in the face, and I think this committee ought to know what the facts are.

First of all, for 50 years telegraph service has been maintained between this country and Europe, and up to the time of the war there never had been a case of disclosure of cable messages to the detriment of the United States trade and commerce that was ever made and proved. In our records—and they go back a great many years—there is not such an instance. There have been some charges. There have been some suspicions, and every one, so far as I know, was vigorously examined, and I can say to you, from my own practical knowledge of the handling of those messages, that in my judgment there is not a single authentic case of disclosure of messages in and out of the United States up to the beginning of censorship.

During censorship there were disclosures galore. In the first place messages had to be transmitted in plain language. In our office in London the British censors were located for all the Atlantic cables. They were well-meaning, honest gentlemen who had served their country in various capacities, usually army officers. They had no profound knowledge of trade. Messages all came in plain language and they were submitted to them to be read before delivery. Our friend, Col. Blank, saw a message that related to the import or export of lumber. Who did he ask? He might have asked the board of trade or he might have asked somebody who was in the lumber trade. We did precisely the same thing. The messages in and out of the United States from Europe and to Europe were all disclosed whenever the censor thought it was necessary to do so, and this was made possible because they were all in plain language.

After the armistice you will remember that censorship continued for a number of months and plain language also prevailed, and more or less the same practice prevailed. I happened to be in London in 1919 and made a vigorous protest against the continuance of censorship, as an unnecessary thing, and a thing that was embarrassing the United States and embarrassing Europe, because there were disclosures. I happened to be at that time in the rather innocuous position of Federal cable director, a high sounding name

without very many duties, but I did feel the obligation of inquiring into these cases of disclosure.

I went to Holland because there was some claim that messages going into Scandinavia to and from the United States were being disclosed to the detriment of the American business. It was true. I do not think there was any doubt about it. I think they were disclosed in London. They were disclosed by the censor. We got rid of the censor; we got the codes restored. As you gentlemen know, every business of any importance has its own code, highly specialized and almost impossible to read. You can read any code if you have enough messages. These wonderful fellows who decipher codes can penetrate the secrets, but please understand that to decipher an intricate code requires an army of people.

One of the reasons why it was suspected that England had sinister motives at that time was this: England has been very much on the qui vive for bolshevism, and her censorship is entirely limited to Europe. European messages in and out of England are still censored for the purpose of finding out what the bolsheviki movement is. That brought about some protest from the European nations, and England said, "In order to put everybody on all fours and treat everybody evenly, after you have had a message for 10 days and have dealt with it, we are going to drive a truck up to your building, and we want you to put all the messages in that truck—we do not know what is in them—we will drive that truck away and keep it overnight in a barn and drive it back in the morning, and we can properly say in diplomatic language that we are treating everybody alike."

I can say to you, gentlemen, that it is my belief that never has there been a message read by England that has gone in or out of the United States since the censorship was abolished. England has been clever enough to see the necessity of being extremely careful in handling our cable messages, because she has been the neck of the bottle for years and it is just to England that she should be. If England gets the reputation of disclosing messages to and from this country she will lose the neck of the bottle, because the same rules and regulations prevail with respect to the integrity of a cable message as prevail with respect to the integrity of a sealed letter. You may just as well accuse England, France, and the other countries of opening our mail as of reading our cable messages. It does not exist.

Before Senator Kellogg's committee a witness was produced, a Capt. Hill, who told us that he was the chief censor, as I remember it, for the United States in Rio, and he said a good many things that he should not have said, because they were not true, and he said a good many things that he should not have said, because he did not know. Since then, by the merest chance, the Rio head censor for the Government of the United States has appeared on the scene, Mr. Boyd. I questioned Mr. Boyd because it is very important that we should know. "We are going to South America. We are representing to our patrons a new American cable, and as we handle 85 per cent of the telegraph business of this country we can not mislead them. Did you ever see anything suspicious, while you were the chief cable censor for the United States and had charge of all of

the communications in and out handled by the British company?" He said, "I found in every case that they were honorable to the last degree. They cooperated with me. They helped us in our censorship. I believe, from my observations and from my experience there for months that they were absolutely honest in handling all the messages in and out of the United States. I should be very glad, indeed, to appear before any Government committee and give evidence." That is from the chief censor in Rio. Perhaps our friends who desire to continue in the enjoyment of the monopoly in South America, would like to encourage the thought that any connection through the Western Co. is likely to lead to the disclosure of American methods to the detriment of American trade and to the benefit of British trade. Stop and think what that involves. You can see how preposterous it is, how silly it is.

Now, the All-American Co. does not fear it very much, because when they advertise their lines, if you will turn to their map, you will see that they include in their system, as a part of their system, as an immediate connecting system, the lines of the Western Co. There is nothing said in their advertisements, "Beware of the use of the Western Co.; it is never safe to use the cable through the United States from the three places that we reach—Rio, Santos, and São Paulo." They do not say that. They say, "Look at our system, it reaches all over South America," and they print the Western system.

Gentlemen, there is one thing that is certain. We can not start in and remake the cable world, the cable world was started and made before we went into it. Connections were established, rules and regulations were laid down, concessions were obtained, Government policies were formulated, and nations said, "We will control the land lines, and the distribution and collection of telegrams and cablegrams." We have to take what there is and make the best of it, and we will make a good job of it, too, if you will encourage the enterprise of laying cables. Please do something that will say to the world, "Anybody that has the courage, the money and the enterprise to land a cable on these shores, come along with it; come along from every border of the globe; come to our shores. There is one thing to bear in mind and that is when you get here you will be regulated as to conduct and general behavior by the Interstate Commerce Commission."

Everybody will know where they are at, but do not do anything, please, in the interest of foreign commerce. I do not speak of this in behalf of my own company, we can get along very comfortably. We do not make any money, not so much, out of the cable business—except during the war—except as an adjunct to the land lines. We want to make the land lines as valuable as possible. We believe there should be many more cables. We believe that wireless should be encouraged for the same reason, but if the Japs will bring a cable, which they will not, if Italy will give you that long-needed connection to the south of Europe—do you appreciate that in order to get to the south of Europe you have to pass every cable message through England or through France, and as you know it has to go overland through France. The important markets, one of the most hopeful of all the markets of this country is Italy and the South of Europe,

which is absolutely denied a direct cable connection. Do you not want to do that?

The CHAIRMAN. I think we are getting a little far away from the subject.

Mr. CARLTON. I think so.

The CHAIRMAN. It is very interesting, but we want to go along a little differently.

Mr. SWEET. Mr. Carlton, do you think there is any disadvantage to the business men of this country, because you propose to connect with the Western Co.?

Mr. CARLTON. I think there is every advantage.

Mr. SWEET. Do you believe it would be better for the business men of this country if you had a direct line, an all-American line, to Brazil; would there be any advantage to the business men of this country?

Mr. CARLTON. No, sir.

Mr. SWEET. In other words, putting your line on the same par with the All-American Co., which connects with Brazil?

Mr. CARLTON. We are perfectly willing to do so and make it all-American, but it is sentimental, because as soon as a message gets to Brazil it will be distributed by the British Western Co., and it does not make any difference, but if it makes it any better we will make it all-American to Brazil. The British Western Co. is willing to—

Mr. SWEET (interposing). You do not believe there would be any advantage to the American business man because it is distributed by a British company in Brazil or transmitted in part to that country by a British company?

Mr. CARLTON. None whatever. If we had thought so, we would not have objected.

Mr. BARKLEY. Whether in the Senate hearings or in the debate or somewhere, there was a complaint on the part of South American newspapers that they do not obtain news from the United States, whereas they get pages of telegraphic news that is of general information to the people of South America, not only from a commercial standpoint, but from the standpoint of news from European countries, but from the United States in quite a number of large daily papers very little news appears?

Mr. CARLTON. Yes, sir.

Mr. MAPES. May I supplement Mr. Barkley's question? I have a copy of the Congressional Record before me which contains a letter from the American manager of the La Prensa, in which he says that he is limited in sending messages over the All-American cables to 20, 30, or 40 words a day, when he would like to send 3,000 or 4,000 words.

Mr. BARKLEY. That is where I got the impression.

Mr. MAPES. That is on page 607 of the Congressional Record in a letter from the American manager of La Prensa.

Mr. CARLTON. I can only supplement that by saying that you understand, I am sure, that the South American papers are furnished with free news by the Havas Agency. I believe that is the difficulty. They present the papers with large volumes of news, largely in the interest of France, and Reuter's in the interest of Great Britain

have a very full and very cheap news distributing system through South America, and the result is that you find the South American papers are full of news in interest of France and Great Britain and scarcely anything in the interest of the United States. Under our arrangement with the Western Company, and we have gone into that very carefully, they are bound to handle press at a cheap rate and we propose to use a considerable portion of our facilities for the dissemination of news from the United States to South America. We do not do it because we are philanthropists, because it does not pay particularly well to handle news, but we do it because we know if we want to encourage a profitable cable business you first have to encourage news; news goes first and the profitable cable business follows after.

Mr. SANDERS. That is, getting the people acquainted?

Mr. CARLTON. Yes, sir; getting the people acquainted. I hold out as one of the pressing needs of South America, as expressed by this letter, and I have many other similar requests—I think there is a gentleman in the room who will tell you that there is a dearth between here and South America in handling news.

Mr. TAGGART. We come now to the question of the form of this bill as it came to this committee from the Senate. What suggestions are necessary, in our opinion, to make this bill as applicable to the subject matter of the bill fair and reasonable? Let me state what the situation is with respect to its bearing upon the application of section 1 of the bill. As presented on the face of the bill there are several classes of cables which may be stated. You have first, as a classification, cables which have come to the Secretary of State which have been granted a license and which in times past have been landed. I call those cables licensed by the President because it is acting under the President that the Secretary of State in that matter has been able to grant the license.

Mr. JONES. Has that been done under any existing law or by regulation as the result of this license?

Mr. TAGGART. The licensing began in 1869.

Mr. JONES. By law?

Mr. TAGGART. By no act of Congress, but because the French company was coming to this country, having the right of exclusive connection with France, Gen. Grant or his Secretary of State thought that that should not be permitted to land unless it waived the monopoly. That was the beginning of it, and it has continued more or less ever since.

There is that class of cables that exist. There is another class of cables, if we may say, No. 2 cables, which have landed under an express Congressional authority. Certain ones were referred to yesterday in Mr. Webster's examination of Mr. Carlton as the cables from Key West to Cuba, which, under the special act of Congress of May 5, 1866, were landed and laid from there and have since been operated. There is also the class of cables, the third class, which is the subclass of this second class where the question is as to whether or not they have been landed under congressional authority, depending upon the interpretation of the post roads act of July 24, 1866, and whether it did, by its terms, include the right to land cables.

There are some of those. The Western Union has some of those, and that subclass includes within it, as I shall endeavor to show, the

cable about which and out of which this controversy arose. The cable proposed to be laid from Miami leads to Barbados, and the Western Union claimed that it was entitled to land in August of 1920, and that it was prevented from being landed as it claims by the unlawful act of the Secretary of the Navy, acting under order of the President. That is the question which is before the Supreme Court for adjudication and which the courts below have uniformly, all of them to whom presented, said the Western Union was right. The Government contests that they have such right.

There is an additional class, and that is a certain number of cables which have landed without either the President's license or without any action of Congress. That is to say, a cable owned by some foreign cable company which is landed, which company can not receive the benefit of the post roads act, because that is limited strictly to the telegraph companies organized under some State of the United States. So you see, the domestic companies are in a different light. As stated by Mr. Carlton yesterday, and as the telegraph companies view this situation, if a comprehensive system of regulation is to be adopted it must be a system of regulation that would apply to it and all of these cases alike.

Let me also state with respect to these classes that as to all of the classes no question whatever obtains by anybody as to the right of those companies which have landed under congressional authority, because no question obtains by anybody that Congress, under the Constitution, has the right under the section which was quoted yesterday of regulating the commerce of foreign nations and to enact legislation respecting their cable lines. The questions with respect to this matter are with respect to the cable companies which have not landed under congressional regulation.

Now, with that statement of the situation and the classification of these cables, I want to call your attention to the way this bill leaves these different classes, without any amendment whatever, pointing out how differently it deals with those classes and, as we think, unfairly, and it is to correct that unfairness that we will offer the suggestions. First, let me read the language of the section:

That no person shall land or operate in the United States any submarine cable directly or indirectly connecting the United States with any foreign country, or connecting one portion of the United States with any other portion thereof, unless a written license to land or operate such cable has been issued by the President of the United States.

That applies to the future.

Now we come to—

*Provided, however,* That any cable now laid within the United States without a license granted by the President may continue to operate without such license for a period of 90 days from the date of the approval of this act.

Observe, please, that of the classes I named only the first class, having a license granted by the President, is excepted from the operations of the act, so that every cable landed under an express authority of Congress has its license revoked by this act after 90 days from the passage of the act. Every cable landed without authority from Congress likewise is compelled within the period of 90 days to get a license.

The Miami-Barbados cable, which was sought to be laid under the authority of the act of 1866 and which was prevented by the unlawful

act, as we claim, and I shall contend that for the purposes of the argument—by the unlawful act of the Secretary of the Navy it would have been in operation from last August until the present time—is excluded and must likewise get a license within 90 days or before it can lay under the circumstances of this case. So you have a few cases, a very small minority, the All-American is one of them, which is a significant fact in connection with this matter. You have a few cases of cables which have the President's license with respect to which there is contention and which the Supreme Court is being called upon to decide, as to whether it is valid or not, excepted from the operations of this act. You have all the cases of cables which everybody concedes have direct authority of Congress for their being laid and operated, and you have their licenses canceled, all of which we think is very unfair.

Mr. JONES. Please give the names of the companies that have an Executive order or license; I understand there are just a few of them.

Mr. TAGGART. I think the only one that can be named—there are some—the Commercial Cable Co., I think, has one with respect to its cable over the Pacific. With respect to its cables on the Atlantic I understand it has not. That is my understanding. The reason I am uncertain as to some others, there are some of the Western Union cables, for instance, two cables from Canso, Nova Scotia, which were laid without a license, and at Rockaway Beach, when the landing was changed, and it went through the process which occurred in Key West, which I have described.

Mr. CARLTON. The telephone company has one.

Mr. TAGGART. The telephone company has one, but I was speaking of telegraph companies. There was a cable for which the license went up from the Secretary of War to the President and it was signed in some other form. Those three are considered as presidential licenses, but it is a small minority. That is the situation, however, in which this bill leaves the present cable situation in the United States.

Mr. MERRITT. Under the language of this section as it stands, is it in your opinion true that submarine cables not landed but operating in the United States anywhere could be put out of business after 90 days?

Mr. TAGGART. I so understand it. It would be a violation.

Mr. MERRITT. And that would cover every cable in the United States.

Mr. TAGGART. That is another phase of this bill which I was going to call attention to in another connection.

Mr. SWEET. The original bill as presented simply refers to those that have been granted a license by the President.

Mr. TAGGART. Yes.

Mr. SWEET. Then the amendment that you suggest takes care of another class which are granted authority by Congress.

Mr. TAGGART. Yes; let me say with respect—

Mr. SWEET (continuing). And then there are others, if I may suggest, which do not come within either of those provisions.

Mr. TAGGART. Yes.

Mr. SWEET. And is it your contention that those companies could not take advantage of the 90-day provision in the proviso in the first section?

Mr. TAGGART. No. I think all that have been laid have 90 days within which to come to the authority that grants the license and secure a license, and that only those are excepted from the termination of their right to operate at the end of the 90 days that have a license from the President. That is my understanding. Now, observe the penalties. Any company that has a cable laid and does not get a license within 90 days, its operation is prevented by injunction under section 3 of the act, and whoever undertakes to operate comes under section 4 of the act making it a criminal misdemeanor and making him liable to imprisonment and fine. That is my understanding of this act.

Mr. HOCH. Just on that point, are you contending that the cable laid from Key West, I believe—

Mr. TAGGART. Yes.

Mr. HOCH (continuing). Under the special act of Congress of 1866 should not be required to submit to the necessity of a license, ultimately?

Mr. TAGGART. No; not at all. I am coming to that in a moment. The view of the telegraph company is that if there is any regulation it should apply equally to all, and after a very great deal of study we have evolved an amendment or an additional proviso which we think will cover each of these classes and put them all on an exact equality, and I was just about to call attention to that.

Mr. HOCH. May I ask the status of a cable laid under the terms of a congressional act? There is nothing in this first section to prevent its operation in the meantime, is there?

Mr. TAGGART. No; for the 90 days. That is true as to a cable laid. There would be no right, however—let me call attention to that before reading this amendment, that that would not cover a cable like the Miami-Barbados cable which has been laid to the 3-mile limit and comes within the description of section 3 of the act "about to be laid," so that we have to cover that, and that will explain the character of the amendment.

Mr. HAWES. May I interrupt you for a moment?

Mr. TAGGART. Certainly.

Mr. HAWES. Are the wireless stations controlled under presidential license?

Mr. TAGGART. I think not. My recollection is, and I was going to call attention to that in another connection, the Secretary of the Navy during the war had power to license and was required to by congressional action, and I think there is now pending bills in both the House and the Senate which propose to establish a board such as Mr. Carlton referred to yesterday for the regulation of radio communication.

Mr. HAWES. What is the difference, so far as governmental control is concerned, of a message sent through the air or under the water?

Mr. TAGGART. Only the instrumentality over which it goes.

Mr. HAWES. But the principle of Government control should apply to one as well as to the other, should it not?

Mr. TAGGART. We think so, except there are the details as to how it shall be controlled. The method of control, of course, would be easier in one case than in the other.

Mr. HAWES. This bill establishes a new principle, which has been disputed, as to the transmission of messages. What would be the advantage of including the wireless with the cable in this particular bill?

Mr. TAGGART. I will tell you. If you stop to think, a wireless is open to the world when it is sent, and the details of regulation as to stations and features of that sort, as a practical matter, are so different, as you will see by looking at any of the bills that have been presented to cover radio communication, that what would be proper for one would be absolutely inapplicable to another. That is the detail reason.

The CHAIRMAN. Gentlemen of the committee, in very many of the cases of questions which have been put to Mr. Taggart the answer has come back that he was just about to approach the subject. Could we not very wisely let him go on and continue his statement, reserving our questions to the end, in the hope of being able to save time because he will very likely cover many of the questions in that way.

Mr. TAGGART. I may say that the questions do not bother me at all.

The CHAIRMAN. Not at all, but I was thinking of saving the time of the committee.

Mr. TAGGART. I desire to save your time as much as possible.

The CHAIRMAN. Suppose we let Mr. Taggart continue until he has finished his direct statement and then let the questions follow.

Mr. TAGGART. That will be entirely satisfactory to me, although the other plan is also satisfactory.

As I said, when interrupted by the questioner, this applies only to one set of cables, and as I understand the view of Mr. Carlton and the view of the telegraph company, it is that any regulation of these cables should apply to all on a basis of perfect equality, preserving their rights, and the telegraph company before presenting this amendment wishes to have it distinctly understood with respect to cables it has laid, that it may be about to lay, such as the Miami or any others, that it recognizes to the fullest extent the right of Congress, under the article of the Constitution which has been referred to, to adopt regulations which supersede those now existing, wherever need exists therefor, and all that it asks is that it be put on a basis of equality with all other companies engaged in the same business.

I suggest, to cure the inequality which I have described and which I think your honors understand now, that, as an addition to section 1 of the act, this amendment or addition be made:

*Provided further,* That cables heretofore laid under express authority of Congress or upon compliance with the then existing law may be operated without such license, upon compliance with the law as it existed prior to the passage of this act, for a period of 90 days and thereafter until the right to operate such cables shall be revoked as hereinafter provided.

Now, that covers practically all of the cables which have been created or laid under laws of Congress, very clearly, as I think.

Mr. SWEET. And that, if I may interrupt, is suggested in place of the proviso in section 1?

Mr. TAGGART. No; it is in addition to that, in order to make clear its application. Then further—

*and, provided, further,* That any submarine cable—

And by this language we seek to cover the Miami-Barbados cable, so that you may understand its application—

*and, provided, further,* That any submarine cable now being laid by a domestic telegraph company and now ready to be connected with the shore may be landed and operated without such license, upon compliance with the law as it existed prior to the passage of this act for a period of 90 days and thereafter until the right to operate such cable shall be revoked as hereinafter provided;

I will explain later why we put all those clauses in.

and all cables described in this and the next foregoing proviso shall be subject after such periods of 90 days to the provisions of section 2 hereof to the same extent and effect as cables operating under licenses granted by the President.

That will obviate, as I shall point out, any amendment to any other features of the act.

Now, let us take the first part of this proposed amendment: That cables heretofore laid under existing authority of Congress may be operated without such license upon compliance with the law as it existed prior to the passage of this act; that is, under the act of 1866 or under the special act under which they were laid, "for a period of 90 days and thereafter until the right to operate such cables shall be revoked as hereinafter provided."

You will remember that in section 2 of the act the right to revoke is limited, and we extend the right of revocation, as it should be, to this class of cables also. So that they stand on an exact parallel and on the same foundation exactly as cables which are named under the licenses granted by the President. They have no advantage. They have the same identical status as stated in the amendment.

Now, take the next provision, as to which there may be some questions, and I will read it again in order that you may catch the point:

*And provided, further,* That any submarine cable now being laid by a domestic telegraph company and now ready to be connected with the shore may be landed and operated without such license.

We mean by that that if the Supreme Court shall declare in its decision in this controversy now pending with the Government that the act of 1866, the post roads act, gave to the Western Union Telegraph Co., when it accepted the act in 1867, when it did accept it, the right at all times thereafter and until the act was repealed or amended, to lay cables under the navigable waters of the United States; that it had that right in August of last year when it sought to lay this cable and was unlawfully deprived of that right at that time; and that it should now be permitted to land that cable upon such declaration by the Supreme Court, as if it had been landed in August; and is not that fair? It is nothing more than fair, and, as we say, it puts us on an exact parity with the situation as it would have been if it had been permitted to exercise its legal right at that time. That is all we ask.

Mr. JONES. In other words, if the Supreme Court should decide adversely to the Government then you would depend upon this legislation as congressional authority to land anyhow.

Mr. TAGGART. No; we do not. That is not fair. We would have the right then—

Mr. JONES. I am not so sure but what you ought to have it and that was the thought I had in mind.

Mr. TAGGART. No; we have not asked that notwithstanding the decision of the Supreme Court we shall be permitted to land without a license. In the event of an adverse decision that would mean the Navy was right in preventing us from landing and we would then take our chances under the law as it stood at that time and we would ask for a license. That is what it would mean and I think that is fair.

Then we have a further provision that it may be landed and operated without such license upon compliance with the law as it existed prior to the passage of the act.

We would have the right then, subject to the law as it existed then, assuming that the Secretary of State was right in refusing the permit to us, we would have to go to the Secretary of State and ask for his permission, and we would have that right for the same period of 90 days, which these other cable companies have, in order that we might get our license.

The amendment further provides:

And thereafter until the right to operate such cable shall be revoked as hereinafter provided.

We then take our chances with everybody else on that subject.

The next provision is:

And all cables described in this and the next foregoing proviso shall be subject after such periods of 90 days—

That is, these various periods to which they are subjected, which is the limit that this language gives for the operation and application of this new law—

after such periods of 90 days to the provisions of section 2 hereof to the same extent and effect as cables operating under licenses granted by the President.

Now, let us turn to what those are—

Mr. SWEET. Before you proceed to that, let me ask you just one question: Suppose there was an adverse decision by the Supreme Court and this legislation was enacted. Under that particular provision you could still go on.

Mr. TAGGART. For 90 days.

Mr. SWEET. For 90 days.

Mr. TAGGART. Yes.

Mr. SWEET. Under the provisions of the law as they now exist, or as you construe them to exist, in defiance of the decision of the Supreme Court?

Mr. TAGGART. No; I do not so understand this.

Mr. SWEET. I am going on the assumption that there is an adverse decision.

Mr. TAGGART. Yes.

Mr. SWEET. In other words, the legislation that we finally pass, if that is put into legislation, would be in force, which would connect you back for 90 days with a law which might be construed in the present case adversely to you.

Mr. TAGGART. No; I do not so understand it. Let me read it again:

*Provided, further,* That any submarine cable now being laid by a domestic telegraph company and now ready to be connected with the shore may be landed and operated without such license.

Now, that is the first condition.

Upon compliance with the law as it existed prior to the passage of this act.

That comes in to modify it and covers the case of an adverse decision.

What would be the effect of an adverse decision under the law as it existed before the passage of this act?

It would be that we would have to go to the Secretary of State for a permit, and when we got that he would have to give it for at least a period of 90 days.

Mr. JONES. That is on the assumption that the Supreme Court would say in its decision what the law is.

Mr. TAGGART. Yes, sir.

Mr. JONES. Namely, that they will determine whether it is by congressional or Executive authority.

Mr. TAGGART. That is the thought precisely.

Mr. JONES. I believe you stated they would have to do that if they found a decision on the merits of the case?

Mr. TAGGART. They would have to; yes, sir.

Now, I was about to proceed to section 2. I think we have expressed the thought we intended to cover, and we come now to section 2 with reference to which this amendment has been made in order to avoid further amendments in the act.

It will be noticed that the President may withhold or revoke such license when he shall be satisfied that such action assists in securing rights for the landing, etc., which you will remember.

Now, we connect that up with the section so that all the cables under these various classes will alike be subject to revocation by the action of the President under the conditions that are named in section 2, and not those alone which have the presidential license, so that it may put them all on an equality.

Now; that covers all I want to say on that amendment. I want, if I may, for a few moments, to go into a question that Mr. Carlton raised yesterday in regard to the place in which to vest this authority.

Mr. Carlton spoke about the question yesterday, and it is significant, and I call attention again to the original bill, which sought to vest this power directly in the Secretary of State, and the suggestion by Mr. Carlton was that it be put in a board of three consisting of the Secretary of State, the Secretary of Commerce, and the Postmaster General. I would like to give what I think are very substantial reasons for the selection of those three secretaries.

As I stated in the earlier part of my statement—and I think it will not be seriously controverted—the essence and practically all that relates to the laying of a cable and the operation of a cable is a matter directly connected with foreign commerce. It is a matter of either the creation of an instrumentality of foreign commerce or the doing of foreign commerce over the instrumentality after it is created.

The Supreme Court of the United States in the first case that arose under the post roads act in 1877, Chief Justice Waite render-

ing the decision, laid the right of Congress to pass the post roads act upon two clauses in the Constitution, the one which has been quoted, the right to regulate commerce with foreign nations, among the several States and with the Indian tribes, and upon the right to establish post roads; those two. It was based upon both equally. Either would have been sufficient to support and uphold the constitutionality of the act, which was challenged in the case to which I refer, *Pensacola Telegraph Co. v. The Western Union Telegraph Co.*, in 96 United States, the first case in the book.

MR. SANDERS. Do you remember the page?

MR. TAGGART. Page 1, it is the first case in the book. To that basis for this legislation the court, as far as I know, has practically adhered throughout its whole history and there have been many, many decisions on many phases of the telegraph law. Except the particular one which is now presented to the Supreme Court, nearly every phase has been presented and they have adhered to that as the basis for this legislation; that it is commerce or that it is an adjunct, so to speak, of the postal authority, both of them supporting it, and I might add that so far as I know, and I have had occasion to study the application to these matters for a good many years, the post roads act has never been related to the diplomatic function at all or to the executive function as such. So that with respect to the two, the Department of Commerce or the Secretary of Commerce and the Postmaster General or the Post Office Department, it would seem to me, from the very nature of the case, there was a fitness with respect to this matter, because it does concern almost exclusively commerce or postal matters, and it does concern them both to a greater or lesser extent and far more than it does diplomatic affairs or the Secretary of State or the Department of State, which has heretofore exercised the power.

It is true, however, and if any of you have read the brief, which I had a part in preparing in the Supreme Court case, you will see that we recognize in that brief that with respect to questions connected with the establishment of a cable, there may be an indirect connection with diplomatic affairs, just as there is an indirect connection between the establishment of a line of American ships from one port of the United States to a port of a foreign country, another branch of commerce, or any matter that may be connected with commerce; but it does not make commerce diplomacy nor give diplomacy the control over such commerce which raises state questions of that sort, which I think we demonstrated. I may unduly flatter myself on that, and I will wait to see what the Supreme Court says in that suit, but the courts below have said so, at any rate.

For that reason we venture to suggest that these two Secretaries should be necessarily associated with the department or the Secretary of the department which hitherto has exercised this power; and as a practical matter, I think the committee will recognize that while the act names the President, yet it will take the same course that it hitherto has taken with respect to the practical manipulation and management of it.

There is, therefore, a propriety in what I have said about adding the Secretary of State so that you may have all the functions of the Government represented by the chiefs of departments that are con-

cerned in this matter, and which, one against the other, may regulate each the action of the other so that no one will have an undue stress upon the matter as it relates to his particular department.

With respect to that, we have prepared a proposed amendment which we will submit and which we think simplifies the bill very considerably. It adopts a very large portion of it without change of wording at all, and if I may be permitted I will read it and leave it for your consideration.

It proposes to substitute for section 1 the following section :

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of State, the Postmaster General, and the Secretary of Commerce shall constitute a board to be known as the board of cable control, and, as such board, shall have power to make rules and regulations governing the laying, landing, and operation of submarine cables directly connecting with any foreign country, and to issue, revoke, or modify licenses therefor.

SEC. 2. That no person shall land or operate in the United States any submarine cable directly connecting the United States—

I am going to strike out the words “or indirectly” for reasons I was going to speak of with respect to the present bill, even if this amendment is not accepted—

with any foreign country, unless a written license to land or operate such cable shall be issued by the board of cable control: *Provided, however,* That any cable now laid within the United States may continue to operate without such license for a period of 90 days from the date of the approval of this act:—

That covers every cable without any necessity of describing them—

*And provided further,* That any submarine cable now being laid by a domestic telegraph company and ready to be connected with the shore may be landed upon compliance with the law as it existed prior to the passage of this act; and all such cables shall be subject to the provisions hereof to the same effect as cables licensed by the board of cable control.

Section 3 is modified very slightly and is old section 2. We have provided for the board of cable control to withhold or revoke such license when it shall be satisfied, and then the section goes as old section 2.

Section 4 is section 3 of the original act.

Section 5 is the criminal section, the same as now exists. The other sections are the same. Without unduly patting myself or anybody on the back, I think it is a very much more workable act and a much simpler act than the present act in its language.

In furtherance of my substitute I notice that bills have been introduced in both the House and Senate in this session covering radio communication and which adopt the principle which I contend for with respect to the board of control, and name the Secretary of Commerce and several other Secretaries to be associated with him, and three outsiders, and so they have a board of control of seven, suggested in simultaneous offerings in both House and Senate. I do not know what fate they will receive in either House.

I want to call your attention to just one thing more. When we have had the benefit of hearing what the proponents and favorers of the bill may say, if it is necessary, I should simply like to have some opportunity to reply, if there is anything needing reply, when they have disclosed what they have.

Mr. BURROUGHS. I should like to ask Mr. Taggart just one or two questions in regard to the policy of legislation such as this which is proposed.

Am I to understand that you advocate or do you merely assent to the idea of granting to the Executive what would seem to be pretty absolute power in the way of granting licenses and revoking them at his will, without any law covering the matter, laying down any principles to cover his action? What is your attitude?

Mr. TAGGART. Our attitude is that of an assent. We are willing to assent to it. If you ask my personal opinion, as I understand the view of the telegraph officials, we think that the experience of the last 50 years demonstrates that there is no situation which justifies—I mean not to be at all offensive—the drastic features of the bill which would lodge that absolute power in any executive department. That is our attitude with respect to it.

Mr. DENISON. A question has been suggested that I want to get your view on.

This bill gives to the President the power not only to license, but to revoke?

Mr. TAGGART. Yes, sir.

Mr. DENISON. To revoke the permit of any cable company to operate?

Mr. TAGGART. Yes, sir.

Mr. DENISON. Whenever he thinks that by doing so he can secure the rights for landing or operation of cables in foreign countries?

Mr. TAGGART. Yes, sir.

Mr. DENISON. So if this bill becomes a law as written, the President will have it in his power to revoke the license or permit to operate of any cable company in order to obtain permission for some other cable company to land in some country?

Mr. TAGGART. I think that would be true. I think that was sought in the case which we have been discussing more or less. As Mr. Carlton has said, we are somewhat gunshy. We feel that Congress may act and we are willing to assent to it.

Mr. DENISON. To take a case which has been suggested by some of the witnesses, the All-American Cable Co. has exclusive rights in some of the countries on the western coast of South America—Peru, for instance?

Mr. TAGGART. Yes, sir.

Mr. DENISON. Suppose we passed this law and the All-American Co. had its permit to operate, then, if the President should decide that the Western Union should be permitted to enter Peru he could cancel the permit to operate of the All-American Co. in order to secure that purpose.

Mr. TAGGART. Yes, sir.

Mr. DENISON. In order that he might obtain permission for some other company to land in Peru?

Mr. TAGGART. Yes, sir. Of course, we realize that the only control this act could possibly have upon the President is the force of public opinion, that is all.

Mr. SANDERS. In your bill you propose to appoint a board of three Cabinet members and have them establish regulations and I notice in the further provisions of the bill that you recopy section 2, practically, and do not make those regulations cover the question of the revocation and withholding of licenses.

Mr. TAGGART. I do not know that I catch your point. We say that they shall make general regulations and issue licenses.

Mr. SANDERS. But you do not say that the regulations shall be regulations respecting the revocation of licenses or granting of them?

Mr. TAGGART. No. I understand that the regulations may be something other. They may be general regulations, they may be regulations that apply to all companies or special regulations that apply to the conditions of a particular company by reason of the fact that special conditions obtain with respect to that company. It would be almost impossible, as I understand the situation of cables, to make general regulations that would apply to all, unless they were so general that they amounted to practically nothing. I think you will have to concede that if you undertake to go through the different conditions that obtain with respect to a particular company and know the facts with respect to its particular landing—

Mr. SANDERS. As I understand, it is your belief that the power to regulate cables belongs to the Congress of the United States?

Mr. TAGGART. I have no question about that. I do not understand that it is questioned by anybody.

Mr. SANDERS. I understand that. Assuming that to be true, do you think that Congress can delegate to the Executive the arbitrary power to refuse to grant a license?

Mr. TAGGART. My understanding is with respect to the administrative features of a power of that sort—I think the question was raised in respect to some tariff legislation in the administration of President McKinley; I do not remember the case now—but the administrative features of an act of this sort of a power may be committed to the Executive within certain limits.

Mr. SANDERS. Yes, sir.

Mr. TAGGART. I might say, with respect to that, that my understanding is that this section 2 was amended to meet the views of Secretary Hughes in order to prevent the original act from being considered by him to be unconstitutional.

Mr. SANDERS. Yes.

Mr. TAGGART. Whether he has effected it or not, I have not examined.

Mr. SANDERS. But under section 2, if it passes, the Congress would delegate to the President of the United States the arbitrary power to refuse to let, say A, a cable company, come into this country.

Mr. TAGGART. I am not clear that it could be called an arbitrary power to do it. My reason for that is this: The river and harbor act gives the Secretary of War the power to approve plans with relation to obstructions in harbors. In the case of the Philadelphia Co. against Stimson, the Supreme Court, in passing on a case which arose on the shores of the Ohio River in regard to an act of that sort, sustained the action of the Secretary but said that he could not act arbitrarily.

Mr. SANDERS. There the purpose is to prevent the obstruction of the stream?

Mr. TAGGART. Yes, sir.

Mr. SANDERS. His action would have to be with reference to the public, but by this section he can refuse to permit a cable to enter here in order to have that club in his hands to accomplish another

purpose that has nothing whatever to do with it. Can we do that? Of course, a legislative body can take an individual case and acting in our legislative capacity we can cover that particular case in an arbitrary way, because the legislative body has that power, but if it is a legislative function, then we can only delegate power to the President to act in accordance with the regulations or in accordance with the same fundamental basis which we lay down by putting everybody on a par.

MR. TAGGART. If I were a legislator, and I took that view of the act, I would not vote for it.

MR. SANDERS. That is a question of wisdom. I am talking about power. I do not believe that Congress has the power to delegate a legislative function, under the Constitution, to an executive body to act arbitrarily, because then we have not delegated an executive function, but we have delegated to it the performance of a legislative function.

MR. TAGGART. Yes, sir. I can see great force in your argument. While I am not advocating the bill, I am simply assenting to it, trying to represent those ideas that benefit my clients.

MR. SANDERS. The first section I hoped would provide for regulations and the revocation of licenses under regulations. That can be done, but I doubt even then if it would meet the constitutional objection?

MR. TAGGART. I am not prepared to discuss that question, because I have not examined that phase of it.

MR. SANDERS. I have not examined it carefully; I am just asking that question.

MR. TAGGART. It is a question that will bear a great deal of discussion.

MR. JONES. If we can do that, then it is a Government not of law?

MR. TAGGART. I agree fully as to that.

MR. GRAHAM. I have before me the act of 1866. As I understand it, you people claim that you have the right to land under that post roads act?

MR. TAGGART. Yes, sir; as interpreted by the Supreme Court in the Pensacola case, which I called attention to.

MR. GRAHAM. I am not familiar with that case. Does that case go so far as to hold that this act extended over the 3-mile limit?

MR. TAGGART. It goes so far as to say this—you no doubt have a copy of the brief that we filed in the Supreme Court?

MR. GRAHAM. No, sir.

MR. TAGGART. I will be glad to see that you get one. We went into the record in the case, a case that concerned domestic lines within the State of Florida, but those domestic lines connected with the two cables from Miami to Florida. We went into the record as filed in the Supreme Court, and as the briefs will show we argued to the court and to the courts below that that case, while nominally presenting a question of domestic commerce, really presented a question of foreign commerce, and what Chief Justice Waite said in that case was this, that with relation to the criticism that the terms of the act were limited to the public domain and did not extend to anything within a State, he said, after quoting the words as to navigable waters and along the military and post roads,

the words of the act are to be given their natural signification, and as thus read they apply to the entire jurisdiction which Congress had with respect to such matters. Congress has jurisdiction not only with respect to the roads, but with respect to the 3-mile limit, and with respect to all matters of commerce and navigation. The authorities so hold. As thus applied, the natural and ordinary meaning would apply to the navigable waters within the 3-mile limit as well as the rivers and harbors and everything of that sort.

Mr. GRAHAM. The act of 1866 said that any telegraph company shall have the right to construct, maintain, and operate lines of telegraph, and so forth, through any portion of the public domain. Does that mean through the 3-mile limit off shore?

Mr. TAGGART. Further down in the section it says over, under, or across the navigable waters.

Mr. GRAHAM. Navigable streams or waters.

Mr. TAGGART. Navigable waters include the 3-mile limit. The authorities are very clear on that.

Mr. HOCH. You have suggested certain amendments to section 1 for the purpose stated, as I understand, of placing all cables on the same basis, regardless of the authority under which they were laid?

Mr. TAGGART. Yes, sir.

Mr. HOCH. I was not really clear in my mind as to whether they would do that. I understand, with reference to this Key West cable, laid under a special act of Congress, your proviso to be that it might continue not only for 90 days' operation, but might continue thereafter until revoked. Is there not quite a substantial difference between being permitted to continue without revocation and the necessity of getting a license?

Mr. TAGGART. With reference to the Miami cable, in that case if we received a license within the 90 days we could continue until revoked, as provided in section 2.

Mr. HOCH. If that was the intention, very well. It would hardly seem so to me from reading the section.

Mr. TAGGART. It may be it also applies. I do not recall at this moment. That cable was laid upon authority of Congress, and it may continue for 90 days. The original bill excepted only those that had presidential licenses, and we seek to put those laid by authority of Congress on an equality with those that have a presidential license.

Mr. HOCH. Yes, sir. As a policy, if we are to have a comprehensive license system, do you think every cable, regardless of where it is laid and regardless of the authority under which it is laid, should be required ultimately to take out the license?

Mr. TAGGART. That is covered by the bill as respects the second class. With respect to the other classes of cables which have authority, the same discretion should continue with respect to that.

Mr. HOCH. What is your judgment, as a matter of policy, as to whether we should not require all cable companies to be licensed?

Mr. TAGGART. Here are cables laid 50 years ago; there is no complaint with respect to them, no actual reason for any revocation or anything; why go to the necessity of going through that process?

Mr. HOCH. I am asking that question along the general lines suggested by Mr. Sanders's questions. It seems to me to permit the continued operation would put additional opportunity in the hands

of the Executive to exercise this power arbitrarily. If every cable company were compelled to take out a license, presumably they would have to meet the same conditions.

Mr. TAGGART. My experience and study of these conditions in licenses is that we have affected mighty little the operations of the cables.

Mr. HOCH. I have no doubt as to that. I am raising the question of policy—

Mr. TAGGART. Permit me to say why I say that. In 1869 Gen. Grant required the French company to waive its right to a monopoly. It came and landed on our shores and has continued to operate. It operates just the same. The Western Union has been compelled to operate in France in every respect down to the present time without the conditions having affected in any way, pro or con, just the same as if no conditions at all had been exacted of the French company.

Mr. SWEET. You have stated a number of times that you simply assented to this legislation, that you are not advocating it?

Mr. TAGGART. I assent to it to a certain extent.

Mr. SWEET. Am I justified in drawing the conclusion that you really do not want any legislation at this time?

Mr. TAGGART. We would be better off, and prefer that there should not be any legislation on the subject.

Mr. BARKLEY. On page 2 of this bill, beginning at line 4, it says:

May grant—

That is the President.

May grant such license upon such terms as shall be necessary to assure just and reasonable rates and service in the operation and use of cables so licensed.

Do you consider that as giving the President any authority or power over the rates for the operation of the cables?

Mr. TAGGART. I took that up with Senator Kellogg. I called his attention to the fact that as I construed the act to regulate commerce, granting powers to the Interstate Commerce Commission, the right to hear and determine with respect to any particular rate, including rates over cables for transmission to foreign countries, recited under section 15 of the interstate commerce act, the Interstate Commerce Commission had jurisdiction. He said he thought, in view of the proviso that we suggested which reserved the power to the Interstate Commerce Commission with the harmonizing of the provision as to the President's power and of the Interstate Commerce Commission, that the licensing must be just and reasonable and must not contain details of rates, leaving the question of the details to be determined by the Interstate Commerce Commission under its power.

Mr. BARKLEY. As a matter of fact, the jurisdiction exercised by the Interstate Commerce Commission over the transmission of telegraphic messages is very much limited as compared with its jurisdiction over railroad rates.

Mr. TAGGART. Not at all; it is just the same. It is expressed in identically the same form in section 15.

Mr. BARKLEY. But it is not exercised to the same extent.

Mr. TAGGART. I will tell you the difference, if I may be permitted. The telegraph company is not required by section 6 of the act to file its rates. It is given permission to fix its own rates primarily, but

the same power, identically, on complaint that a rate is unreasonable or that a practice is unreasonable or that a classification is unreasonable or unjust, the same power to review is given to the commission in the one case as in the other.

Mr. BARKLEY. But in the case of the telegraph company there has to be an affirmative complaint, and hearings and so forth, and in the case of a railroad rate the schedule is filed with the commission and after a certain period it becomes operative.

Mr. TAGGART. Yes; but the commission has the same power on its own initiative to institute a hearing in the case of one as in the case of the other.

Mr. BARKLEY. I believe that is true under the transportation act.

Mr. TAGGART. That has been true since 1910, when telegraph companies were brought under the act. Section 15 provided for that.

Mr. BARKLEY. I was wondering whether, in spite of the provision there, the President might fix such terms in the license as would in effect be, in general, a regulation of rates.

Mr. TAGGART. I think not.

Mr. BARKLEY. How can he fix terms with respect to rates in the license without, to that extent, regulating them?

Mr. TAGGART. I do not think it goes to that extent. If it does, it should be amended.

The CHAIRMAN. Mr. Taggart, at one stage in the proceedings in regard to the consideration of this bill this committee felt it had accomplished something in the way of bringing about general approval by the introduction of the word "such" in line 9 after the word "any," so that it would read, "that any such cable," and so forth.

Mr. TAGGART. In what page?

The CHAIRMAN. Line 9, first page.

Mr. TAGGART. "That any such cable now laid within the United States."

The CHAIRMAN. Yes. At one time the committee thought it had this bill in a form which would be approved by everybody through amending it in that way. Later on, the legal representatives of your company objected to the indorsement of the bill with that single amendment, and they proposed two other amendments, which were cited yesterday by Mr. Carlton, to wit, in line 8, after the words "United States," insert the following language: "or authority has been granted by Congress," and in line 10, after the word "President," "or without authority granted by Congress."

We had some little delay in the consideration of the bill, in an informal way, and after some hours the legal representatives of the Western Union Co. said that those amendments would be agreeable and the company would stand on them, as far as their attitude toward the legislation was to be considered. You have now introduced practically a new bill, and I would like to ask if you would still subscribe to your previous statement, that with the amendments indicated the bill would be agreeable, or at all events you would accept it without further contention.

Mr. TAGGART. With respect to that, those amendments were suggested in a desire not to be at all obstructive to the passage of legislation of this sort. If you ask us whether we would accept this if you, in your judgment, passed it, we would say, "Yes; we can not help ourselves; but we think that it would not accomplish the pur-

pose you desire." You ask us to say whether we approve it, and we say we could not approve it, and we do not approve it.

The CHAIRMAN. At the time that discussion was going on, the counsel of the Western Union Co. had these amendments under consideration and stated—if I am not mistaken, and if I am I trust I will be corrected—that they would confer as the local representatives in Washington with the department in New York and determine whether or not those amendments would go, using that expression, and let the further consideration of the bill drop out, so far as they were concerned, and a communication was promised us in reference to any changes you might want to make other than those indicated. We were advised, dealing in perfectly good faith, that no further statement would be made, and, in the language of the street, you would "stand pat" on these amendments. If I am wrong I am going to ask the local legal representative to correct me, because I have no desire to misrepresent the facts, but if that is a fact—

Mr. TAGGART (interposing), I do not know what was said by the local representative, of course.

The CHAIRMAN. He can speak for himself because he is here now. If that is a fact, that would give the committee as alternatives No. 1, say, your bill; No. 2, the bill, Senate 535, as amended and described by me a moment ago.

Mr. TAGGART. I could point out the difficulties of accepting those two amendments, which I am not surprised that anybody overlooked. I overlooked this section 1 in my conference with Senator Kellogg, in the haste with which we were acting and stated, when we talked over the telephone, I thought that would be all we could suggest by way of amendments, but asked him for the privilege of withholding the matter or having the privilege of a further conference, and I telegraphed him Monday, and he declined to accept even these amendments.

The CHAIRMAN. Mr. Taggart, one view of the situation from my angle is this: From the time when Senator Kellogg was assured that the bill was all right until now, the shifting of the viewpoint or the modified views of the Western Union have kept this thing on the hot griddle every minute, and the point we make now is to know whether you are through or whether to-morrow you will come down with an idea you forgot to-day, and I would like to have for the benefit of the committee a definite statement that when you get through this morning the chances are you have finished.

Mr. TAGGART. We have nothing more to suggest.

The CHAIRMAN. And to-morrow we will not expect you to recall something that has not been put in.

Mr. TAGGART. We have nothing more to suggest than we have suggested so far as the Western Union is concerned.

#### STATEMENT OF MR. CLARENCE B. WILSON, ATTORNEY AT LAW, WASHINGTON, D. C.

Mr. WILSON. Perhaps I ought to state, if the committee will allow me, that when we heard of the bill having passed the Senate, and heard that it had gone over to the House and had been referred to this committee, we asked the chairman of this committee, as we thought, for an opportunity to be heard. There was some misunder-

standing. I was unfortunate in not making myself clear. After that, it came as a surprise to us, as a surprise creating an emergency, that it was proposed to hurry the bill on its passage through the House without an opportunity to be heard.

In that view of the case, if the bill was going to be hurried through the House without an opportunity to be heard before this committee, we endeavored, in good faith, to protect the interests and rights of the Western Union Telegraph Co. under the bill as then framed by the amendments which were discussed with Mr. Webster, a member of the committee. We suggested to him two amendments in lines 8 and 10, which were satisfactory to the company, and which would, as we thought, protect the rights of the company in so far as the landing of the Miami cable was concerned, and in so far as putting that cable on an equal plane with other cables which the bill proposes to license. That was the purpose of those amendments.

We were acting in a hurry, and upon analysis it seemed to us that even from the point of view of the proponents of the bill, even those who wanted the President to have this power, even those who thought the President ought to exercise this power, which seems arbitrary, that those amendments might be objectionable because they might confer upon cables landed by authority of Congress under the post roads act, or upon the Miami cable, if landed, an irrevocable right to operate, and when you come to analyze those proposed amendments you will see that.

Therefore, upon further analysis we prepared what we considered this better amendment, after conference with Mr. Taggart and Mr. Carlton, which accomplishes exactly what we wanted and exactly what we attempted to accomplish by the amendments in lines 8 and 10, as proposed in our conference with your chairman. That is our whole position.

They are offered here in good faith and as actually doing what those proposed amendments were aimed to accomplish, but which upon further analysis we came to the conclusion they failed to accomplish. So that our position here is exactly the same as it has been at all times. We have offered an amendment—I do not refer to the substitute amendment—we have offered an amendment which preserves the rights of the Western Union Telegraph Co. as to the landing of the Miami cable, in the event the bill is recommended to be passed by this committee and is passed by the House.

The CHAIRMAN. Mr. Wilson, am I quite correct in stating that after some hours you sent me this bill [indicating]?

Mr. WILSON. Yes; I recognize it from this distance.

The CHAIRMAN. With the amendments printed in, as representing your issue of the bill, in the form you would be willing to have it adopted and put through?

Mr. WILSON. Yes, sir; that is correct.

The CHAIRMAN. And you printed those words in yourself?

Mr. WILSON. Yes, sir.

The CHAIRMAN. And there was a letter in regard to the matter which accompanied this bill?

Mr. WILSON. Yes.

The CHAIRMAN. Have you finished your statement?

Mr. WILSON. I think so. I am through except to the extent that I wish to repeat that the amendment as proposed by Mr. Taggart

to-day is a perfection of the amendment there proposed, but involves exactly the same idea.

The CHAIRMAN. And some others?

Mr. WILSON. No, sir; nothing further so far as protecting the rights of the Western Union are concerned. Some others, so far as this is concerned; if they are not adopted it might defeat the very purpose of the bill if it is the intention of Congress to give the President the power that the bill proposes to give.

The CHAIRMAN. The Chair would like to ask who there are present who desire to protest against the Senate bill in the form it now stands.

Mr. COLE. I would like just a few moments.

The CHAIRMAN. Is there anybody else who wishes to protest against it? If not, will you take the stand, Mr. Cole.

**STATEMENT OF MR. C. D. M. COLE, ASSISTANT VICE PRESIDENT  
AMERICAN TELEPHONE & TELEGRAPH CO., 195 BROADWAY,  
NEW YORK, N. Y.**

Mr. COLE. I simply want to call the committee's attention to the fact that this bill as worded before your committee is capable of including the telephone cables of the Bell system, hundreds of which are laid under the waters of continental United States, and I simply ask that it be so worded as to cut those out. That is all I have to say about the bill.

I wrote to the chairman of this committee and he asked us if the word "such" in line 9 would satisfy us, and we answered that rather than delay action on the bill we would accept it; but now that there is a hearing we feel that the language ought to be made so clear that it can not include telephone cables.

For example, gentlemen, we have cables between New York and Brooklyn; many of them. We have cables between Brooklyn and Staten Island; many of them. Those are engaged in simply exchange service. We have cables between West Superior and Duluth, across the Mississippi River. There are probably 40 cables between Sandy Hook and Albany, across the Hudson, and of course those cables and the service over them, within any one State, are subject to the jurisdiction of the local public utility commission, and we feel that this bill should not include the regulation of those cables, and we simply ask you to please make the language clear enough so that it does not.

The word "submarine" is capable, I think, of including the cables between Brooklyn and Staten Island, between Seattle and Bremerton in Puget Sound, and some of those in San Francisco Bay.

Mr. SANDERS. And also across to Cuba.

Mr. COLE. Yes; but of course, that is to a foreign country.

Mr. SWEET. What would you suggest by way of amendment.

Mr. COLE. I would suggest this amendment: Add to page 1, line 12, the following:

*And provided further, That the provisions of this section shall not apply to cables all of which, including both terminals, lie wholly within continental United States.*

"All of which, including both terminals, lie wholly within continental United States" as distinguished from the definition of United States in the bill.

Mr. SANDERS. That would require you to license your cable to Cuba.

Mr. COLE. Yes; we have the President's permit for that.

Mr. BARKLEY. Would not that necessitate the elimination of the words in lines 5 and 6, "or connecting one portion of the United States with any other portion thereof."

Mr. COLE. No, sir; because the United States is defined in the bill as including outside territory subject to its jurisdiction, not continental United States, which is the language I used. I think I have taken care of that.

Mr. GRAHAM. Do you have any cables outside of the 3-mile limit?

Mr. COLE. No; not that I know of. We have this Cuba cable, but that, of course, is covered.

Mr. GRAHAM. And you have no other local cables of that sort?

Mr. COLE. No.

Mr. GRAHAM. Do you have any cables connecting this country with Mexico?

Mr. COLE. Yes; I think there are some. In fact, I know there are.

Mr. GRAHAM. Under the Rio Grande?

Mr. COLE. Yes; and there are some between this country and Canada. We have probably 25 cables across the Detroit River now.

Mr. GRAHAM. Would not your amendment cover those cases?

Mr. COLE. No; we would have to have the President's permit under this language, because that is a foreign country.

Mr. GRAHAM. And you are perfectly willing to be required to have that in those cases?

Mr. COLE. Yes; there is no objection to that at all. The objection is simply to these telephone cables that are used for exchange business across the rivers of the United States.

The CHAIRMAN. You would still, perhaps, desire to have the word "such" embodied in the bill?

Mr. COLE. I would prefer that; yes, sir. I thank the committee.

The CHAIRMAN. Is there anyone here now representing the Radio Corporation of America?

Mr. ELWOOD. Yes, sir.

**STATEMENT OF MR. J. W. ELWOOD, ASSISTANT TO THE CHAIRMAN OF THE BOARD OF DIRECTORS, RADIO CORPORATION OF AMERICA.**

Mr. ELWOOD. So far as the hearings have developed, the Radio Corporation offers no objection to the bill.

The CHAIRMAN. As of the 8th of May, the president of the Commercial Cable Co. telegraphed to the committee, and confirmed the telegram that day by letter, saying that he would not be able to be here, but would name Mr. John Goldhammer to represent him. This morning a letter has been received by the chairman, in which this sentence appears and dominates the substance of the communication. Let me say first that Mr. Goldhammer said he had been called back

to New York and could not come to the session to-day, and then he continues:

I beg to say, however, that the Commercial Cable Co.'s views on this question of legislation for the regulation of cable landings were fully expressed by Mr. Mackay and myself at the hearings of the Senate committee, and there is nothing further that we could contribute to the Congress on this question except to reaffirm our previous statement that we have no objection to the proposed legislation and bill and to giving the President the required authority to issue the licenses.

Mr. BARKLEY. Mr. Chairman, I would like to ask the gentleman representing the Radio Co. a question.

Your attitude is that this bill does not affect you in any way?

Mr. ELWOOD. Yes, sir.

Mr. BARKLEY. And that is the reason you made that statement about it?

Mr. ELWOOD. Yes, sir.

Mr. HAWES. I would like to ask you a question: Are there any bills that you know of, either in the House or Senate, creating a commission to handle radio messages?

Mr. ELWOOD. Under the act of Congress in 1912 the Secretary of Commerce was given the authority to have the administrative power over the radio, so far as laws enacted by the Senate and House were concerned, and he has exercised that power during the past nine years. At the present time there is a bill in the Naval Affairs Committee of the Senate, introduced by Senator Poindexter, which creates a commission. There is also a bill in the Interstate Commerce Committee, introduced by Mr. Kellogg, by request, which puts the power where it is now, in the hands of the Secretary of Commerce. There is also a bill, introduced by Mr. Kellogg, by request, and referred to the Interstate Commerce Committee, which places the power in the hands of the Secretary of Commerce and gives him an advisory committee, which is created by statute, but it is only an advisory committee. There is in the House a bill introduced by Mr. White, of Maine, which places the power in the hands of the Secretary of Commerce, and I believe Mr. White has also introduced a bill by request, which places the power in the hands of the Secretary of Commerce, but does create by statute an advisory committee.

The CHAIRMAN. Will Mr. Root kindly appear now in behalf of the All-American Co.?

Mr. ROOT. Mr. Chairman, Mr. Nielsen, the Solicitor for the State Department, told me a few moments ago that he was somewhat in a hurry to get back to his department and would be obliged if he could appear before me.

The CHAIRMAN. Very well.

Mr. NIELSEN. Mr. Chairman, so much has been said here, and having come at the request of the Secretary of State, I feel considerable responsibility. I think I would require a good deal more than the 15 minutes you now have remaining, but if you would like to have me begin now, of course, I will do so.

The CHAIRMAN. The Chair is somewhat in doubt. Mr. Root stated that you had made the request to go on now.

Mr. NIELSEN. I am perfectly willing to go on, if you so desire, now. I did suggest that I was very busy on a certain matter that had been

placed before me last evening, and if it was just as convenient to Mr. Root I would like to get back to the department as soon as possible.

The CHAIRMAN. And that is your attitude now?

Mr. NIELSEN. Yes.

The CHAIRMAN. In that case we will ask you to begin your statement now as we will have 15 minutes before time for taking a recess.

**STATEMENT OF MR. FRED K. NIELSEN, SOLICITOR FOR THE  
DEPARTMENT OF STATE.**

The CHAIRMAN. Mr. Nielsen, will you kindly announce your name and official position?

Mr. NIELSEN. Fred K. Nielsen, Solicitor for the Department of State.

Mr. Chairman, Judge Webster defined so well yesterday what I had understood to be the issues before this committee that I wish those issues had been adhered to, but, of course, all members of the committee appreciate that they have not been adhered to, and it seemed to me that perhaps I interpreted the chairman correctly a little while ago to anticipate that unless he forced something in the nature of a second agreement with representatives of the Western Union Co., there would be still further issues.

I think I know why these issues are created, but I have no criticism to make of the representatives of the Western Union Telegraph Co. I believe they are making a very interesting and pretty fight by at least legally proper stratagems here, to render the Government impotent to control cable landings in case the Supreme Court should decide next Monday, or perhaps a week later, that the power to control such landings, which has been relied upon by the Nation for 50 years, does not rest with the Executive.

If the court renders an opinion to that effect, then this cable line 3 miles outside of Miami Beach can be landed.

Now, it may be very well that that cable should be landed. All that I think Secretary Hughes is interested in is that the Government should have the power, as the Government has asserted the power in the past, to pass on that very important question, whether this British monopolistic line in Brazil, enjoying there privileges which American companies are deprived from enjoying, shall come into the United States through a short American line running from Barbados. That is the sole issue here. Shall the Government have the right to pass on that question? An incidental question is raised: Who shall pass on this issue? The Western Union Telegraph Co. would like to have three men especially designated. On the other hand, it was suggested by Judge Webster yesterday that the President, being vested with this power, could have the advice he desired of any Cabinet officer.

These amendments, to which the chairman referred a little while ago, were brought to my attention. I am sorry that anything I say will necessarily be very rough and rambling, because these cable matters, in which I am not an expert, come to me from time to time, and I must do a little something with them hurriedly among a great many other pressing things. But I did examine those two amendments which the chairman mentions as having been given to him by

Mr. Wilson, and I took some little time to prepare some rough notes with reference to them. I had no idea that other amendments would come.

We are told that the company agrees in principle—I should like to refer to that statement made here, “We have have agreed in principle to this legislation.” Mr. Chairman, I am very familiar with that phrase, “in principle.” It is a phrase, I think, that was concocted originally by diplomats, enabling one always to say to another, in a friendly way, that he agrees in principle with a proposition, but enabling him also always to refuse assent, on the ground that he can not agree to it in form.

As pointed out by the chairman, perhaps that agreement has been broken, but it was brought to my notice that there was a certain agreement. I considered these amendments which have been mentioned, and it occurred to me that this committee could, perhaps, not well decline to give a hearing. I had this thought that although I do not agree altogether with the interpretation that has been put upon the bill by Mr. Taggart, possibly the bill will affect private rights as defined not only under these private acts that have been mentioned, but under the post roads act, and it occurred to me, since the Secretary of State favors this bill, and since he is anxious for its passage, that it would be of some little value to the committee if I could save them a little time and perhaps ease their consciences a little on this point of private rights that might be affected in case this new measure should become a law.

With that idea in mind I analyzed all the laws that I believed ever had been enacted, private or public, with reference to cable matters. I think there are only about eight such laws, most of them obsolete.

If the committee desires, I should like to run over my notes and point out the scope of these acts.

The CHAIRMAN. You may proceed in your own way.

Mr. NIELSEN. I should like to point out again, as I did before, that this power of regulating the landing of cables and the operation of cables has been exercised for half a century. I do not think that I need to refer to that long line of noted diplomats and of leading lawyers who have supported that authority, nor to the two Secretaries who have been mentioned, Gresham and Olney, who expressed views different from those of the other Secretaries. The point I think the committee can not lose sight of, and that is very, very important, is that the power was relied upon by the Nation.

I think it is not at all impossible that the Supreme Court of the United States will sustain the contention of the company—I should be inclined to think it will not sustain the contention of the company, that either this power heretofore exercised does not exist under the Constitution, or what seems to me less plausible but perhaps possible, that there is this blanket authorization which Mr. Taggart has mentioned and contended for under the post roads act to land.

If a decision shall be rendered to that effect, the Government of the United States will be in the very unfortunate and, I think I may say humiliating, situation of having no control over cable landings. I do not believe my statement is too broad. Any cable concern, at least any American concern—and the distinction is not of much importance—can connect the shores of this country with foreign coun-

tries without being subject to any control. That is exactly what the Western Union Telegraph Co. wants to do.

I suppose there is no question about that. It was in anticipation, as I understand, of just such a situation that Senator Kellogg very carefully—in spite of anything that may have been said about this bill having been framed in Mr. Root's office—very painstakingly, in that careful way in which he has handled all these cable matters, undertook to prepare a bill that would give the power to the Executive to control cable landings in case the courts should hold as the company has contended. He undertook to frame a bill that would be satisfactory even to the Western Union Telegraph Co.'s representative. I believe, as the chairman has pointed out—I think I understood him correctly—the Senator framed that bill in cooperation with the representatives of the company with the idea of expediting its passage. It was submitted to those Government officials who have been interested in these cable matters and who may be vested with some authority in the case the bill becomes a law. They agreed to it in a modified form. The modified form resulted from the fact that the Western Union Telegraph Co.'s representatives submitted, perhaps, three or four amendments, only one of which I think I considered desirable, and Secretary Hughes—I think there is no harm in stating this—perhaps was not altogether in favor of those amendments. I am not so sure on that point. But it was with the idea that this legislation should be expedited, so that the Nation should not be humiliated and so that the company should not have its way, right or wrong—although I think the Secretary is not fully committed as to whether they are right or wrong—but somebody connected with the Government, some responsible official or officials, should pass on the question in controversy just as, from time to time for a period of 50 years, responsible officials have passed on similar questions, he agreed to these amendments. Everybody understood, as I think the chairman's remarks made clear, that it was a bill to which no one had any opposition.

I do not myself, and I want to disclaim, when I say that, any claim to being a cable expert or knowing much about cable matters. I do not myself consider this a very comprehensive measure. I think it might be framed more carefully. I think there are involved in it some mooted questions as to the delegation of legislative power, although those questions have been pretty well settled. But what was wanted was the best possible bill that could be obtained, so that there would be some governmental authority in case the Supreme Court should say that there is not any authority in the Executive to control cable landings. I do think this, that a bill was framed that lays the foundation for a uniform policy, and I do not agree at all with Mr. Taggart's views that the bill does not lay a foundation for a uniform policy. I think it is one of its merits that it does lay the foundation for a consistent and uniform policy, a policy under which cable companies, no matter which one of his four classes they fall in, can be treated, as they should be treated, on terms of equality.

If the committee is interested in these private acts—and I suppose it is—I think that I can hurriedly run over them. They show what legislation would be affected, as it is admitted, of course, that certain legislation may be affected if this bill becomes a law.

The CHAIRMAN. Mr. Nielsen, if you are going to take up a new subhead, would it not be as well to recess now as to run a few moments more?

Mr. NIELSEN. That will please me very much, Mr. Chairman.

The CHAIRMAN. The committee will now take a recess until 2 o'clock p. m.

(Thereupon the committee took a recess until 2 o'clock p. m.)

AFTER RECESS.

The committee resumed its session at 2 o'clock p. m., pursuant to the taking of recess.

STATEMENT OF MR. FRED K. NIELSEN—Resumed.

The CHAIRMAN. Gentlemen, we will go ahead, please.

Mr. NIELSEN. Mr. Chairman, I was about to refer to the legislation regarding cables which has been enacted. The amendments which first were proposed, which, I think, were suggested to you by Mr. Wilson, had for their purpose, I presume it will be admitted, the preservation of all rights under existing legislation. On the face of it that seems to be an eminently fair proposition, but I think that as a matter of fact any such provisions would result in inserting into this bill something which no member of the committee would knowingly permit; that is, it would result in inserting a joker into the bill which would have the effect of nullifying the very purpose which the bill is intended to accomplish.

I said I would refer to certain private acts. So long as nobody has asserted any important rights under any act, except the act of 1866, which is of particular concern to the Western Union Telegraph Co., I believe I will omit reference to these several acts. I think it is unnecessary to discuss them. As was pointed out yesterday, both by Judge Webster and by Mr. Taggart, who is very familiar, I think, with these statutes, they all originally contained provisions with reference to amendment or repeal. That, of course, is an important feature of this legislation.

Mr. SANDERS. Do you know what section of the Revised Statutes that act of 1866 is?

Mr. NIELSEN. I have not the precise citation of it.

Mr. GRAHAM. It is page 221, volume 14, United States Statutes at Large, the Thirty-ninth Congress.

Mr. NIELSEN. The act of 1866, which I was about to refer to, is the private act with regard to the two Key West cables.

Mr. GRAHAM. I thought you meant the general act?

Mr. SANDERS. What act is that?

Mr. NIELSEN. May 5, 1866, I think.

Mr. GRAHAM. The one I gave you, Mr. Sanders, was the general act of July 24, 1866.

Mr. NIELSEN. The post roads act is July 24, 1866, and that is in the fourteenth volume of the Statutes at Large, page 221.

This act of 1866, which is the private act, is of considerable interest. It conferred on James A. Scrymser and the International Ocean Cable Co. the sole privilege for 14 years from the approval of

the act to lay cables connecting Florida with Cuba and other West India islands. The Western Union Telegraph Co. asserts rights to operate at this time under the authority of this act the two cables which have been described here.

It was suggested to representatives of the company yesterday that it might be desirable for them to make clear the legal rights which they claim under that act. I think probably the committee may take the view, as I did, that that subject was not made very clear.

I believe Mr. Carlton said, "We are the company." Well, they are not necessarily the company just because they own the stock in the company. And I would like to call attention to the fact that the articles of incorporation of this old International Co. provide that the duration of the company shall be 50 years beginning on the 2d day of December, 1865. Unless in some way the charter of the International Co. has been extended, it seems to me to be a dead concern to-day. I suppose the Western Union Co. is a successor in some way, but just how I am not certain, and I doubt very much if its legal right could be established to operate those cables under that old act enacted in favor of the International Co.

Mr. GRAHAM. This act of May 5, 1866, seems to be limited to a period of 14 years.

Mr. NIELSEN. That is an interesting question, Mr. Graham. It was contended, I think, in behalf of the Government in the legal proceedings instituted in New York, which were described yesterday, that the act gave a franchise to a certain company for 14 years. I myself think that is a plausible construction of the act and that after a period of 14 years there was no such franchise. But I believe that the court has held differently—the lower court. It was suggested, in opposition to that view as to the limited duration of the franchise, that a perpetual franchise was granted, so to speak, until Congress should pass some repealing act, and that the word "sole" refers only to a monopoly for 14 years, but that the franchise goes on until repealed.

Mr. JONES. So far as that is pertinent to the matter before us, it was raised in the trial of that case, wasn't it?

Mr. NIELSEN. I beg your pardon.

Mr. JONES. So far as that matter is pertinent before the committee, it was raised in the trial of the cause, was it not?

Mr. NIELSEN. I think so. I am only referring to it to show what rights would be affected if you should pass some kind of a law putting those cables under control.

Mr. GRAHAM. What nisi prius court decided that?

Mr. NIELSEN. A district court in New York.

Mr. GRAHAM. And that decision stands; it was never repealed?

Mr. NIELSEN. It was appealed to the Circuit Court of Appeals, and the case is now in the Supreme Court of the United States.

Mr. GRAHAM. Was that same question raised?

Mr. NIELSEN. I think I could make that clear a little further in discussing the plans of this company with respect to those two cable lines.

Mr. GRAHAM. All right.

Mr. NIELSEN. Now, assuming that this company has the right to operate these cable lines under congressional authorization, there re-

mains then for the committee's consideration the very interesting subject as to what use may be made of the two cables. I will touch on that, Mr. Graham, and the matter that you have in mind. When the company was thwarted in its efforts to lay the cable from Miami Beach to Barbados, where in turn it would be connected with the British line which has monopolistic privileges in Brazil, Mr. Carlton announced in a clear way that the arrangement between the United States and British companies, which would not be permitted at that time, would be made by the medium of those two lines; that is, there would be a connection from Florida to Cuba, thence to the Barbados, and from Barbados to Brazil. The litigation in New York in some way—and I will not go into that at this time—had for its purpose the limiting of the use of those cables so that the Western Union Telegraph Co. would not be so connected up, so that the British company would not by the use of those two cables as a link gain entrance into the United States.

I think it is a very interesting question, assuming that the Western Union has the legal right to use those cables; it is a very interesting question whether the Western Union may use those cables as a link in this monopolistic system. And if Congress, intentionally or unintentionally, or without any real thought on the subject, in 1866, which seems to me possible, enacted a law which makes this system possible, I assert that no rights would be disregarded or invaded or overridden if Congress should now enact a law which would put those cables under some kind of control, a control similar to that which other cables will be subjected to and which, as a matter of fact, other cables are subjected to. That is the sole point involved, I think, in this act of 1866. So, in view particularly of the fact that Congress reserved the right to modify and to repeal this act, it may properly do so at this time, especially when it has notice of the purpose to which these cables are to be put, a purpose which, I think, irrespective of the express language of the law, never entered into the mind of Congress at that early date. And I want to call attention to that specific provision with regard to repeal:

That Congress shall have power at any time to alter or repeal the foregoing law.

Now, I believe that is all I care to say on the act of 1866, which has been discussed so much.

With regard to private acts, I will merely refer to another law, approved in 1867. There is a cable, I think, that is purported to be operating at present under that act. The law authorized the American Atlantic Cable & Telegraph Co. to lay and operate cables along the Atlantic coast to connect with Europe. The grant was for 20 years. It was to begin active operations within a period of two years from the date of the approval of the act. And the right to alter, amend, or repeal the act was reserved by Congress. I do not know whether active operations were begun within that two years' period. In any event, the franchise has long since lapsed. And still more interesting it is to observe with reference to this act that the company to which the grant was made never availed itself of it. Some cable was laid, evidently under a pretended authorization of this act, by a British company, which was called the Direct United States Cable Co. But this act contains no provisions with respect to assignments,

and I assume, therefore, that the British concern never had any rights under the act. And I think it is very interesting to observe that the cable laid by the company under some pretended authorization is to-day owned by the British Government, and I believe is operated for that Government by the Western Union Telegraph Co.

I think that the members of the committee, in considering the private rights as affected by this proposed legislation, may take the view that there will be nothing arbitrary, nothing improper, in the enactment of a law which would put under governmental control this cable of a foreign Government, presumably laid without any legal authority, and if laid under legal authority, then under an authorization that has long since expired, and if laid under such authority, then under an act that is subject, by express terms, to repeal or modification.

I think, further, that the committee will take the view, having in mind particularly the provisions of the bill under consideration, that it would be highly desirable that this cable should be subject to some control, and, indeed, that it would be or is belittling to the Government that it should not be under any control.

Mr. RAYBURN. Mr. Chairman, are you invoking the rule that the witness shall complete his statement before being interrupted?

The CHAIRMAN. No; we just took that procedure this morning to facilitate matters in the case of Mr. Taggart. Just whatever the members choose with respect to each witness.

Mr. RAYBURN. I would like to ask a few questions.

The CHAIRMAN. Proceed.

Mr. RAYBURN. I would like to suggest that I have listened carefully to this discussion, and I have not come any nearer to receiving an answer to a question I would like to have answered. I would like to know why these people are not allowed to connect a cable with the coast at Miami. That is what I want to know, and that is what I have been unable to find out yet.

Mr. NIELSEN. Well, I dislike to talk on that subject; that is a matter that I have not had anything to do with directly. I think I can throw out a few suggestions, however. It did not appear to me that it was exactly pertinent to the hearings here. I may be wrong on that point.

It is not a question, it seems to me, so much whether they were allowed to land now as it is a question should there be a hearing before properly constituted authorities whether they should be allowed to land. Is it in the national interest that they should land? Should that question be passed upon by the proper authorities? The point, I suppose—

Mr. RAYBURN (interposing). Here is the situation: I understand that no cable company has been denied the right of making the landing; is that true?

Mr. NIELSEN. No; that is not correct. A good deal was said yesterday—and I do not think sufficient importance was attached to it by Mr. Carlton—about the bartering power, so to speak. The Western Union Telegraph Co. owes its ability to do business in France to-day to the fact that President Grant did not allow a company to land until that company gave up its monopolistic privileges in France so that American companies could land there. There is one instance.

ment is presented as the alternative. I merely make this suggestion—

Mr. JOHNSON. I beg your pardon; this says not more than \$5,000.

Mr. TAGGART. I put it at the maximum. The bill does state, as you say, not more than \$5,000.

Mr. JOHNSON. He may be fined \$1.

Mr. TAGGART. He may be fined \$1, that is true; but there is imprisonment also as a possible alternative. I do not mean to exaggerate it and that is a correction I probably should have stated in connection with it.

Those are considerations which I throw out in passing before coming to what is probably the more important question that we have this morning.

Mr. MAPES. May I interrupt for just one question?

Mr. TAGGART. Certainly.

Mr. MAPES. How long will this cable, if it is permitted to land, in connection with the other cables, in your opinion, take care of the reasonable needs of the country?

Mr. TAGGART. I am not a cable operator. I am simply a legal adviser, and Mr. Carlton could probably answer that question very much better than I.

Mr. CARLTON. May I answer that?

The CHAIRMAN. Mr. Carlton will please answer the question of Mr. Mapes.

Mr. MAPES. I ask that because of your statement that this bill should more properly be entitled, in your opinion, a bill to prevent the landing of a particular cable.

Mr. TAGGART. I meant that to be understood as applying to the bill as it originally stood.

Mr. MAPES. You did say that.

Mr. TAGGART. Yes; I did say that. I would like for Mr. Carlton to answer your question because he is much more familiar with that than I am.

(The stenographer read the pending question as follows:)

Mr. MAPES. How long will this cable, if it is permitted to land, in connection with the other cables, in your opinion, take care of the reasonable needs of the country?

Mr. CARLTON. Not more than two years. Within two years, we will have to at least double our capacity to South America on the east coast; and may I say in that connection that our plans contemplate going down the west coast of South America as well, thereby making a complete loop and serving both sides of South America. To do so we shall have to touch in Peru. We have a landing right from Peru limited to this extent: You will remember that I told you yesterday that the All-America cables has an exclusive right in Peru and no one is supposed to land there; but the Peruvian Government, smarting under that exclusive right, have said to us, "You may land only for the purpose of refreshing your current;" that is, "You may land your cable in a hut on the beach, revive the current, so to speak, and pass it on, but you can not handle any business in or out of Peru." The All-America Co.—and I am not criticising them for it—in attempting to maintain their monopoly

have contested that landing in the Peruvian ports, and I believe it is now before their highest court of appeal; but if we are successful, we propose to take care of the west coast by a system of cables down that shore. Therefore, to answer your question I should say we would need one more cable on the east coast within two years and one cable from Miami to Panama, and then down the west coast within 12 months. I should have said that the concession is northward in or out of Peru.

Mr. GRAHAM. Mr. Taggart, have you finished your discussion of questions of policy?

Mr. TAGGART. Yes; I had.

Mr. GRAHAM. Then I want to ask you about something that has been in my mind that I want somebody to clear up for me. I have seen a great deal of discussion in the papers about the inadvisability in general of our sending our commercial messages through foreign cables; that thereby our commercial interests are endangered. Now, what have you to say about that in connection with any British owned and operated cable. I am interested in knowing what you think about that problem.

Mr. TAGGART. That question I may answer, and if I do not meet it fully my associates who are here are much better qualified than I to answer it, will answer it. My understanding of their view of that situation is that so far as British cables are concerned, there is no handicap whatever. Great Britain, as I understand, is the only country which permits foreign cable companies landing on its coast to go into the interior and open offices and transact business with the public. France will not, Spain will not, as I understand it, Portugal, I believe, will not, and I do not know that any of the other countries which have government-owned telegraph systems will; but the operation in England in no way is prejudicial to our interests commercially. That is my understanding of the view of the telegraph companies. Whether so or not, there is this important fact to be borne in mind: Cables from this country landing on foreign shores or landing on shores controlled by sovereignties, which have the same right as to that end of the cable that the United States has as to this end—and a cable is a peculiar property for operation—you have to have the conjoint permission, if I may call it such, in order to transmit a message from New York to Spain, for instance, of both the United States and of Spain, and you are presented with the fact, not a theory in regard to this matter, that wherever you go from the United States to a foreign country, you have as to the outside end of the cable to conform to the regulations of that particular foreign country to which you seek to go.

Mr. GRAHAM. That is true, but let us take a specific instance. Take a cable from France, there are French cables landed in this country?

Mr. TAGGART. Two, I believe, or three.

Mr. GRAHAM. The messages that pass over those cables, of course, are kept within the control of the company itself, are they not, and there is no censorship of those messages by the United States Government?

Mr. TAGGART. Not in time of peace; there was in time of war.

Mr. GRAHAM. Yes.

Mr. RAYBURN. I mean, have any American companies been denied the right before?

Mr. NIELSEN. Yes; I think this Haitian—I have forgotten the name of the case, but there is a very interesting case. The Western Union Telegraph Co. was interested in that case at the time, because it did not want the company to land. I suppose it was then much in the position of the All-America Co. to-day. In order to get into the United States what I presume we may call a monopolistic system, a cable line connecting the United States and Brazil by way of Haiti, some concern, nominally American, I think, bought the last 10 miles of a cable and attempted to land the cable under the subterfuge of landing an American cable by an American concern. Afterwards I believe that cable was put in the name of an American company, but was not allowed to land by the Executive until it surrendered its monopolistic privileges. So there are two instances where cables were not allowed to land.

Now, you ask, Has an American company been refused? I believe I cited one instance. I believe a former Secretary of State took the view that it did not make any difference that this last link of this long cable system was owned by an American concern. He was considering the fact that this American concern was really bringing in a foreign concern, and that is pertinent to your question.

Mr. RAYBURN. Yes; but there is no question about the Western Union Co. being an American concern.

Mr. NIELSEN. Oh, there is no question about any concern being American that is incorporated properly under our law, I suppose. That is a very important point to consider in considering the rights under the so-called post roads act.

Mr. RAYBURN. Now, my first question was, if you do not mind answering and know the answer, just why this company is being held out?

Mr. NIELSEN. Well, I will have to digress a little and, I think, touch upon some personal matters to discuss that matter.

Mr. RAYBURN. I want the facts about this thing; that is all I want.

Mr. NIELSEN. You have been told a good deal by Mr. Carlton about what the past administration did, or what this administration is doing. I would like to consider that authorities of the Government dealing with questions of this kind are not prompted by administration considerations, so to speak, by considerations of politics. I would like to consider, as I think we may consider and believe that the past administration, through the officials who were concerned with this matter, were prompted merely by motives relating to the national welfare. They looked at this case as other authorities had looked at similar cases before. I think the present administration is looking at it in exactly that light.

Now, when this application was made Mr. Carlton said that he was surprised, indeed shocked, I think he said, to ascertain that he was not promptly permitted to land his cable. This was an astonishing statement—at least, it astonished me, coming from the brilliant chief executive of a great concern, because Mr. Carlton is very well versed in what we may call cable history, and so is his expert counsel. They know of these old controversies, two of which I just mentioned, which are similar in principle to the one under consideration. And

I think that any persons informed regarding cable matters would have been very much astonished if permission to land had been promptly granted.

And with reference to Mr. Carlton being in ignorance of the possibility that the Government might act in this arbitrary manner—the Government's action has been described as arbitrary—I want to point out, what I can support by documents here, that before this cable ever left England, before it was ever transported across the ocean, the company had very definite information given to it, oral and in writing, that it would be required to secure a license before landing. I need but read one letter on that, I think, if it is disputed.

Now, why was it not allowed to land? I would like to have somebody else answer who is interested in those economic questions. I think there are two reasons. I think it was desired very carefully to examine into the question whether the British concern with which the Western Union had made a remarkable contract, should be permitted to enter the United States through an American link, because I think it has been the policy since President Grant's day not to allow the landing of a monopolistic cable by a link of that kind, unless our citizens have the right to land on the foreign shore from which that cable comes.

Now, as to whether that principle is sound or not, I do not venture any opinion, and whether it would have been adhered to in this case I do not know. But that is a question, I believe, it was desired to consider.

And another point brought out by Mr. Taggart yesterday, or to-day, was that there was a cable conference held in Washington. I think no question need be raised whether the conference would consider the subject of cable landings; it was intended to consider it; it did consider it and drafted certain documents with reference to that subject. And President Wilson, when this matter was brought to his attention—this controversy with the Western Union Telegraph Co.—wrote a letter asking that such subjects be postponed until after the conclusion of the cable conference.

I think roughly these are the reasons the cable was not allowed to land at that time.

Mr. RAYBURN. That reason does not obtain now, however? It has been determined that this kind of a question was not to go to that cable conference, wasn't it?

Mr. NIELSEN. That was merely a preliminary conference to be followed, according to plans, by a greater conference. I do not know that that reason obtains now.

I must refer now to something Mr. Carlton said yesterday. He quoted Secretary Hughes. It seems that the company applied—Mr. Carlton applied to Secretary Hughes for permission to land that cable. The version that I have, given to me by the Secretary himself only a few days ago, presumably for any pertinent use before this committee—the version I have of his reply was that he said, in effect, "You have challenged the power of the Executive to give you that permit; the Supreme Court will doubtless soon decide whether the Executive has it. I do not like to proceed to exercise such authority at this time."

Mr. Carlton added yesterday, what was entirely new to me, that Mr. Hughes also said, "Personally I would be inclined to allow you

to land." The question is a question of business; it is a question of economics, and it is a question of national policy. I think all the Secretary is interested in now is, if Congress gives the power to some authority to control this landing, and I have no doubt that as soon as that power is fixed in the President the Secretary, if he shall be called upon to act, which he doubtless will, will take very prompt action.

Mr. SANDERS. Are you sure you are correctly quoting Mr. Carlton's testimony?

Mr. NIELSEN. I would be very glad to have him correct me if I am not. I think I am substantially correct; if not, I would be glad to be corrected. I thought that point was a very important one to be brought out.

Mr. SANDERS. Yes; that is the reason I asked you.

Mr. CARLTON. Mr. Nielsen misunderstood what I said, for I am sure he would not make that statement incorrectly or inaccurately. I did not say that or anything like it. I said that Mr. Hughes said that he knew nothing about the subject; that if he was called upon to act he would have a hearing, and then when he had all the facts he would do the best he could to come to a proper and just decision. That is what I said. I think the committee will recall that I said that. I think, perhaps, Mr. Nielsen confuses that with my fragmentary conversation with Mr. Davis. I did not say that Mr. Davis said that he would like to see us land. In fact, I have not found anybody in Washington who has said that yet.

Mr. NIELSEN. Let me just touch on that. Of course, neither of us has any desire to raise any question as to the accuracy of anybody's statement, but it was my impression that Mr. Carlton had added that statement, and I just gave my recollection of it. I should think that what Mr. Carlton said just now must have been precisely what the Secretary said, and I haven't the slightest idea but that he would take some prompt action in this matter. He merely wants authority to act now.

Mr. JONES. Mr. Nielsen, I want to see if I can come, so far as these matters run in my mind here, so far as matters running in my mind are concerned, to an agreement on some facts as I understand them. I understand that before the Western Union Telegraph Co. started in to lay this cable or incur any expense in relation to it, they secured the permission, at least, of the War Department and Navy Department so far as their interests might be involved in it; that they expended somewhere around \$3,000,000 up to date in what has been done toward the laying of this cable; is that right? Is that the way you understand it?

Mr. NIELSEN. No; I don't think that is right. I think that Mr. Carlton's statement on that point was unintentionally inaccurate. I do not believe that any permission from the Navy Department is necessary under the rivers and harbors act.

Mr. JONES. Assuming that part of it is true, the fact is they did do some work at an expense of about \$3,000,000, under what they assumed to be a legal right; that is right, is it not?

Mr. NIELSEN. That is a very difficult question to answer categorically.

Mr. JONES. Let me put it this way: The district court and the court of appeals then has confirmed their position that they had a legal right to do it; is that right?

Mr. NIELSEN. Yes; to proceed with the manufacture of the cable. They had that right.

Mr. JONES. And to do what they have done so far?

Mr. NIELSEN. So far.

Mr. JONES. Now, if the Supreme Court should sustain the circuit court of appeals, the effect of this legislation, if enacted prior to that decision, would be to legislate them out of court, wouldn't it?

Mr. NIELSEN. Oh, I think not. The effect of that decision—

Mr. JONES (interposing). Well, it would change their legal status—

Mr. NIELSEN (interposing). If the Supreme Court should sustain the company's contention, I presume that the company could land its cable.

Mr. JONES. Now, what I am trying to get at is this: Suppose they do land their cable, what harm is there?

Mr. NIELSEN. That is a very broad question—what harm there is in it.

Mr. JONES. Pardon me, but so far as I am personally concerned the avoiding of this question is not going to get anywhere with me. Now, several members of the committee have tried to get out from the witnesses the reason why this work was stopped, and so far as I have been able to get from the witnesses they have always avoided the answer to that question, including the present witness.

Mr. NIELSEN. I thought I gave a fairly accurate answer to that question a while ago. One reason they were not allowed to land by Secretary Colby was, I think, that he took the view that this British concern should not be allowed to come into the United States and operate here through the medium of an American link, because an American concern can not go to Brazil and enjoy the privileges in Brazil that that monopolistic line would be permitted to enjoy here if permitted to come here.

Mr. JONES. Would this cable be separate from the action of any other cable?

Mr. NIELSEN. No.

Mr. JONES. Would there be any difference between this cable and any other cable now operating between this country and foreign countries?

Mr. NIELSEN. Yes; I think so.

Mr. JONES. What is there peculiar about this cable that should prevent it from being landed and operated?

Mr. NIELSEN. This cable is similar to the cable that President Grant refused to allow to land because American cables were not allowed to land in France, the only difference being that in the one case you had a cable which was entirely French, and in this case you have something which is different in form but the same in substance, namely, a British concern linked up with an American concern.

Mr. MERRITT. Isn't it true that, so far as a monopoly is concerned in France, it is quite immaterial whether the cable is owned by America or France? If you link into a cable, you can not control both ends of the cable, can you?

Mr. NIELSEN. I don't know exactly what you mean by control.

Mr. MERRITT. You object, apparently, to this new cable of the Western Union Co. landing here, because you say the Brazil monopoly is extending itself into the United States through a small connecting link. Now, assume it the other way around, that this cable is continuous from here to Brazil, you link up with the same monopoly in Brazil?

Mr. NIELSEN. Yes, sir.

Mr. MERRITT. It can be all one sided; the messages don't all come one way?

Mr. NIELSEN. No; the messages don't all come one way. I feel a little reluctant in discussing this question, because it should be borne in mind that it has not been passed upon by the Secretary of State, and we are only considering a law that would give somebody the power to pass on this economic question. I am very frank to say that I do not expect to have the slightest voice in the decision of this matter; I did not have the slightest voice in the decision of Secretary Colby, so while—

Mr. MERRITT (interposing). May I ask another question? You need not answer if you feel you ought not to answer. You got the impression from what Secretary Hughes has said to you that this legislation ought not to pass until the Supreme Court has acted on the case?

Mr. NIELSEN. Quite the reverse; the Secretary is very anxious that this legislation should be enacted at once.

Mr. MERRITT. Before the Supreme Court decision?

Mr. NIELSEN. Because if the Supreme Court decides that the Executive has not the power which has been relied upon for so many years, either because there is no constitutional authority in the Executive to control cables or because Congress has by the so-called post-roads act given a blanket authority, so to speak—if the Supreme Court should decide that way, which would be in harmony with the contention of the company, then there would be no governmental control, and this company would land its cable without any determination on the merits of the controversy, which I do not like to discuss.

Mr. JONES. Assuming that some kind of legislation could be enacted, isn't it probable or possible that the Supreme Court in its opinion may say something that would give some light or be of some guide to this committee in the framing of a regulatory measure?

Mr. NIELSEN. Well, I am not, as a lawyer, going to speculate on the decision. I can say what I think the court might decide. It would not decide, I believe, what I understood Mr. Carlton to say yesterday that he thought it would decide, whether the power to control cable landings is in Congress or in the Executive, because we all know it is in Congress. The Supreme Court would probably decide whether or not, in the absence of any express constitutional provision or any express statutory provisions, the Executive has the power to control cable landings. It would probably decide that point. It may decide what the post-roads act means. That act was once stated by Attorney General Williams, in 1872, to be an act of domestic application only, having no application to submarine cables. They may decide that this act contains, as Mr. Taggart contends very skillfully, a blanket authorization so that any concern can land which files an application—that is, any American concern.

Mr. JONES. The point that impresses me is this: That I should wait, as a legislator, until the Supreme Court has decided before I legislate on the matter.

Mr. NIELSEN. I should like to add to my answer to the question asked before, which I did not have the opportunity to fully answer. I started to say that the Navy did not have anything to do with this matter, and that the Secretary of War did not, as stated yesterday, issue his permit; his permit is to-day in the archives of the Department of State. Such a permit is always granted conditioned on what the President may do; so that he would not issue his permit until it was decided whether or not the President would issue the usual Executive permit.

Mr. NEWTON. Mr. Nielsen, you made a statement a few minutes ago that one of the reasons for withholding the permit was the fact that it was expected that this international cable conference would pass on the question. Did I get you correctly?

Mr. NIELSEN. I made a statement that that is what President Wilson put in a letter he sent to Secretary Colby.

Mr. NEWTON. I am at a loss to understand—I have not looked at the bill providing for the appointment of members to this conference since its passage, but it is my recollection of it that five appointed from this country were to act with a similar number from several other countries; they were to meet here and dispose of German cables; but I had no idea that they would be expected to dispose of and pass upon questions of cable landings here in America. That is news to me.

Mr. NIELSEN. Well, I suppose there is no harm in discussing that subject. I had nothing to do with the conference. I think that a plan was devised by the Department of State whereby consideration of a preliminary program was to be undertaken, and these five powers that met here had in contemplation some action along those lines, with the idea of facilitating the work of a larger conference. But I am confident that some action was taken. I do not care to discuss that; it may be a diplomatic question.

Mr. NEWTON. But I can not understand why an international group should have any right to pass upon the laying of a cable here in this country.

Mr. NIELSEN. I think I can explain that. You will recall that this morning Mr. Taggart spoke about free intercourse, and stated that communications by cable are commerce, and that it was highly desirable that there should be free intercourse among the nations. That is preaching a doctrine to which the Western Union Co. is not lending its active support. One of the first steps that should be taken—and I am not a cable expert—with regard to this freedom of communications is that monopolies such as exist in Brazil in behalf of this British colleague of the American Western Union Co. should be abolished, so that there may be free intercourse. It is, I think, entirely within the sovereign power of any nation to enter into a general international treaty under the terms of which each nation would allow certain landing privileges to cables coming from other countries. That would be the general plan under which a thing of that kind would be done, and that sovereign power could easily be exercised, I am sure, under our Constitution as well as under the

forms of government obtaining in other countries. Possibly an international arrangement may be brought about, and I understand that it is very highly desirable that there should be such an international arrangement at some time in the future.

Mr. NEWTON. Yes; but that would not involve at all the question of that conference saying whether or not that cable could enter this country, nor would it be necessary to withhold a permit to the Western Union Co. pending some possible action in the future.

Mr. NIELSEN. Probably not. I did not come here to defend the action taken in this case, and I want to discuss another phase of that matter at this time. You have been told, gentlemen, that a certain bureau has been handling this matter in the Department of State, and that the same bureau—

Mr. MAPES. Mr. Chairman, before the gentleman gets off that subject I would like to ask him a question, if I may. I want to see if I understand you correctly, Mr. Solicitor. Do I understand it has been the policy since President Grant's administration to refuse landing to any cable company that has a monopolistic privilege in other countries?

Mr. NIELSEN. I won't say that that policy has been consistent, but I think that the Government has been fairly consistent in the position that we will not allow a cable to come here and land and operate here if an American cable can not be laid on the shores of that other country and be operated there.

Mr. MAPES. But was it in pursuance of that fairly consistent policy, as you understand it, that the Government refused to allow the landing of this particular cable here?

Mr. NIELSEN. I am inclined to think that that policy entered into the consideration of the Secretary of State.

Mr. MAPES. And was that the main reason?

Mr. NIELSEN. I had nothing whatever to do with that, Mr. Mapes. I dislike to keep guessing at it.

Mr. MAPES. I want to ask you just one more question along that line: Is it, as you understand it, because of the uncertain authority which the President has to prevent the landing of cables, in pursuance of that fairly consistent policy that this legislation is asked for?

Mr. NIELSEN. I think that this legislation is asked for in order that there may be an opportunity for the proper authorities of this Government to pass on that kind of policy; yes.

Mr. MAPES. And to give the President the power without any question to do that which has been done in other cases?

Mr. NIELSEN. Which has been done up to the time that this authority was challenged.

Mr. MAPES. I want to ask you just one more question. I think the same thought was brought out by Mr. Merritt, of Connecticut, if I understood his question, but to make sure I would like to ask it in my own way: What is the practical difference between the connection of this Western Union Co. with the company from Brazil on the island and the direct connection with Brazil and Florida?

Mr. NIELSEN. I would really very much prefer not to discuss those questions. They are not legal questions; they are economic questions. They are very interesting, but I myself have tried to avoid having anything to do with them, Mr. Mapes. I am afraid that my conclusions would not be as good as your own on that subject.

Mr. MAPES. As far as the rights of this particular company are concerned, there is nothing that prevents the Western Union Co. from landing at one port in Brazil, is there?

Mr. NIELSEN. I understand that the British franchise does not prevent an American concern from going directly to a port in Brazil, but they can not make port connections, and that the system of land connections there is such that it would not be practicable to lay a cable to one point and rely upon land connections for interport communication.

Mr. RAYBURN. Mr. Solicitor, do you contend, as has been at least intimated here, that this legislation is immediately necessary?

Mr. NIELSEN. I do; with the idea that we do not know just what the Supreme Court is going to decide. It may well be for all I know—and, as I say, I am not an expert on that subject and I am not particularly interested in it; I have enough other things to attend to—it may be that it is good business, good national policy, to allow that cable to land. It is a question that should be passed upon. It is a question which the present Secretary of State thinks is important enough to be passed upon. It is a question which he will not have the opportunity to pass upon if next Monday the Supreme Court says that the President has no power to control the landing of that cable. And what the Western Union Co. is attempting to do to-day is to await the decision of the Supreme Court with the hope that it may be in the company's favor, so that it can make that connection with the cable which lies 3 miles out from Miami.

Mr. RAYBURN. In other words, the urgency of this legislation—the landing of no other cable being imminent—affects only the present controversy between the Government and the Western Union Telegraph Co.? That is the immediate urgency of the legislation?

Mr. NIELSEN. One phase of it, yes; there is no doubt about that.

Mr. RAYBURN. I thought your answer was that the Supreme Court might pass upon it next Monday.

Mr. NIELSEN. I do not know of any other cable that intends to land at this time.

Mr. RAYBURN. Then the urgency of this legislation, the necessity for the immediate passage of this legislation, would be to affect the controversy between the United States and the Western Union Telegraph Co. with respect to their landing at Miami?

Mr. NIELSEN. It would affect that controversy very much; there is no doubt about that.

Mr. RAYBURN. That is the only one it could affect immediately.

Mr. NIELSEN. Immediately; that may be. I could not say one way or the other. I do not know.

Mr. HAWES. Mr. Nielsen, I understand that there has been a definite policy of this Government since the time of Grant, interrupted probably by some difference of opinion under President Cleveland, that the President did have the power to control these applications for laying cables. Is that substantially correct?

Mr. NIELSEN. Yes, sir.

Mr. HAWES. Now, a case has arisen in which that established policy has been placed in dispute?

Mr. NIELSEN. Yes, sir.

Mr. HAWES. And it having been placed in dispute and an exact case being presented to the department, they want a law passed by Congress to prevent any uncertainty in the future?

Mr. NIELSEN. Yes, sir.

Mr. HAWES. Is it not a fact that the main object sought to be attained by the State Department, having control of this end of the cable, is to give it some control over the other end of the cable in a trading way for the benefit of the people of the United States?

Mr. NIELSEN. Well, I can not speak for the Secretary on that point. I should say that it is that broad policy that unquestionably is in mind, Mr. Hawes. And I think that the observations you made yesterday on that point were very pertinent and were perhaps not given sufficient importance by Mr. Carlton. I believe that both his argument on that point and that of Mr. Taggart, who argued here very strongly on the legal questions, are somewhat fallacious. They say, "Why, the Department of State can negotiate anyway for landing privileges." And Mr. Carlton was good enough to say that the executives had been of material assistance to American concerns in the past in obtaining privileges in foreign countries. He overlooked the fact, or at least did not mention it, that the executives could work effectively in the past because they asserted that they had the power to say to the foreign company, "You can not land here unless you surrender your monopoly abroad." Now, with no such power, obviously the Executive can not negotiate so effectively. He can merely make requests of others, and he has nothing to barter, as you put it.

Mr. HAWES. Well, if this power is granted by law, does it not follow that the Secretary of State or the President may want to make a better trade with Brazil for future cable communications with this country—

Mr. NIELSEN. I think so.

Mr. HAWES. And without having that power he loses his opportunity for trade?

Mr. NIELSEN. I think undoubtedly so. I was present at the Senate hearings occasionally, but not very much, and it seems to me I heard Mr. Root discuss that very point at one time. I think he had the idea that if the British company and the Western Union Co. combined were not now permitted to come into the United States it might be that the British company, with a view to perfecting this contract that the two have, would give up its monopolies there in the interest of an American concern. That is a point I leave to him, if I have not quoted him correctly.

Mr. HAWES. So, therefore, in case the Supreme Court should decide in favor of the Western Union's contention that the President did not have the power to pass upon these applications it could recede, and this Government lose its opportunity to negotiate with Brazil for concessions to our country—

Mr. NIELSEN. Yes, certainly; there can be no doubt on that point.

Mr. HAWES. In the absence of a law?

Mr. NIELSEN. Yes, sir.

Mr. HAWES. And this is at present the only company that has any dispute with the Government on this long-established policy of 50 years. Is that correct?

Mr. NIELSEN. Exactly.

Mr. HAWES. One moment. And they do not know when this question will be raised by another cable company again?

Mr. NIELSEN. I would say this, that certain permits have been granted within recent months in which the conditions against which Mr. Taggart complains so much, against monopolistic connections, have been inserted, and those permits have been accepted by other concerns.

Mr. HAWES. Well, I take it that there is no special objection to the landing of this cable, excepting that it may interfere with negotiations with Brazil or some Latin-American country for concessions that this country may desire for its own citizens?

Mr. NIELSEN. In substance I should say that that is right. It may be good American policy that we should have an American line—and I hesitate to discuss this question of policy. It may be good policy that we should have an American line, and there may be possibilities of obtaining an American line down that way.

Now, a good deal was said about censorship here. I do not like to discuss that question. But there was some interesting testimony given before Senator Kellogg by a veteran naval officer who was naval attaché in Brazil some time ago. And I was a little sorry to hear Mr. Carlton say—I think this time I am quoting him substantially correctly—that that officer had uttered what was not true about the censorship of messages by the British in Brazil and the advantages that the British merchants had by virtue of the fact that American messages from America had to go over those British wires.

I would like to refer the committee, because I do not think I will take your time now—

Mr. HAWES. Pardon me; I did not quite conclude.

Mr. NIELSEN. May I just cite this page—page 182. I think, Mr. Graham, you will care to read that testimony of the naval officer about—I do not exactly say censoring; it seems to me it was something worse than censorship of messages that came from North America over the British lines. All of what that officer said may not be true, but I think his statement should not have been challenged in the way it was, without the challenge being supported by evidence.

Mr. HAWES. Relating to the question of speed and the necessity for this law being passed quickly, does not that arise from the fact that at the present time you have an exact case now before the department which raises an exact issue, and that such an exact issue may not be raised again for an indefinite period?

Mr. NIELSEN. Certainly.

Mr. HAWES. That is the real reason for speed, then?

Mr. NIELSEN. That would seem to me a very good reason; yes, sir.

Mr. BARKLEY. Mr. Chairman, I desire to ask a few questions. This cable line from Brazil to Barbados—has that been laid yet?

Mr. NIELSEN. I believe it has. Mr. Carlton knows; I do not.

Mr. BARKLEY. I understood that it connected at Barbados with a cable running to England. Is that correct?

Mr. TAGGART. No.

Mr. BARKLEY. There is no cable, then, connecting Barbados with Europe?

Mr. TAGGART. No.

MR. BARKLEY. I got the impression yesterday that this was a cable line crossing from England to Brazil, and that this Western Union link was to tie to it at Barbados. If I am mistaken about that I should like to be corrected.

(Mr. Taggart exhibited a map to the committee and pointed out the various cable lines.)

MR. TAGGART. The Western lines run down like that [indicating]. They have a line up there to the Azores, across the Azores and down this way. That is by the Western lines—down to Buenos Aires and then across. Then the All-Americas come up here. But you see the line from Europe is below, and then the line to Barbados is up like that.

MR. BARKLEY. Then the line from Europe to Brazil is already laid?

MR. TAGGART. It is already laid.

MR. BARKLEY. And the line from Brazil up to Barbados is also laid?

MR. TAGGART. That is laid; yes.

MR. BARKLEY. And those two lines are owned by this British Western Co. Is that correct?

MR. TAGGART. That is right. This line that we speak of as the Western Union runs in here [indicating] to the coast of Florida.

MR. BARKLEY. Does this line that runs from Brazil to Barbados connect with the Canadian cable?

MR. TAGGART. That is at Bermuda—from Halifax to Bermuda. That is a different line; that is a British line.

MR. SWEET. What is the length of the Western line from Brazil—

MR. TAGGART. To Barbados?

MR. SWEET. Yes.

MR. TAGGART. About 1,600 miles. It is about half of the distance from Brazil to Miami. We have about 1,600 miles on our part of the line and the Western has about 1,600 from Barbados to its connection.

MR. BARKLEY. Mr. Nielsen, you are in a position to answer this: Was not the position of the State Department this, that in view of the fact that an American cable line could not be run from the United States to Brazil and operate there, on account of this monopoly that the British Western Co. possesses, if a line of cable were being run from Brazil to this country it would not be permitted to land, because an American company could not go from here there and operate there; and the State Department therefore acted upon this as if it were a continuous Brazilian line coming from Brazil into the United States and seeking to land?

MR. NIELSEN. I think undoubtedly that must have been the view of Mr. Colby.

I would like to make a suggestion, Mr. Chairman. Perhaps on this economic question, which seems to interest you so much, you would like to hear from somebody connected with the company that, of course, is vitally interested in getting into Brazil, and I would be glad to give way to Mr. Root. I know that his company wants to get there, and the committee all seem to be interested in a question which I am not competent to discuss.

I think Mr. Carlton said yesterday that these matters were dealt with by bureaus, and while he interested me in saying something that

I think would appeal to the sense of humor of the Secretary of State and perhaps of the President, that there was still an influence from the past administration that was being exerted on them and evidently prompting their action, it is a fact that there is no bureau of that kind that handled this question in the Department of State. There never has been such a bureau, and so far as the question was concerned in Secretary Colby's day, I know of no one who handled it except himself, and possibly Mr. Davis was consulted at times, as Mr. Carlton pointed out. There is no bureau that has handled this matter, there are no subordinate officials that have handled this matter, and probably there are only two men that ever considered it in the present administration. One I know to be the Secretary of State, and I presume he has consulted the President, and he may have consulted other members of the Cabinet. What little I know as to his present attitude on this subject I have put before you. When he told me just what he had done up to date, he had not arrived at any decision on the question that you are asking me about so intently, and I never expect to arrive at any conclusion regarding it; so that if you are really interested in that, rather than the necessity for a bill which would give somebody the right to examine into this question, so that the whole subject shall not go by default, because the Western Union Co.'s strategy will ultimately be successful, I would like to give way to somebody that I know can discuss this question fully.

The CHAIRMAN. I think the committee desires to hear you, Mr. Nielsen, if you will proceed.

Mr. BARKLEY. I would like to ask Mr. Nielsen this question, in order to get the gist of this urgency: If I understand your testimony, the State Department's attitude is this, that if the Supreme Court holds that the Western Union Co. is correct and denies the power of the Government to prevent the landing of this cable, and they go ahead and land immediately after that decision is rendered, before any law is passed, the effect would be as if a Brazilian company had come into the United States and enjoyed all of the privileges that exist here, whereas no American concern could get into Brazil and enjoy similar privileges there? Is that correct.

Mr. NIELSEN. That would be my view of it; yes. I can not speak for anybody but myself on that point. It would be a British company enjoying monopolistic privileges in Brazil.

Mr. BARKLEY. But I say the effect would be the same as if a Brazilian company, owned by people in Brazil, where we can not get in and enjoy these privileges, entered the United States through the operation of a joint line owned by Americans and English?

Mr. NIELSEN. Exactly. The contract provided, as I understand, that this British company should build from Brazil to Barbados, and the Western Union Co. should build from Barbados to Florida.

Mr. GRAHAM. Have you a copy of that contract, Mr. Nielsen?

Mr. NIELSEN. No; I have not. I have never seen it.

Mr. GRAHAM. Is it in the record?

Mr. NIELSEN. I am told that it is, on page 399 of the Senate testimony.

Mr. DENISON. Let me ask you this question: Of course, you are familiar with the terms of this proposed bill?

Mr. NIELSEN. Yes; I have read it over.

Mr. DENISON. Now, if we should delay the passing of this bill for, say, two weeks or a month, until after the Supreme Court renders its decision, and if the Supreme Court's decision should be adverse to the contention of the Government and this company should go ahead and make its connections, then under the terms of this bill when it is passed the State Department could cancel the permit any time it wanted to, could it not?

Mr. NIELSEN. I think it could. At least it could bring about an ultimate cancellation.

Mr. DENISON. Does it not say plainly that the President may revoke the privilege of operating any time he wants to make an advantageous deal with some other country?

Mr. NIELSEN. Yes; but operations, as I understand it, can only be suspended through judicial proceedings.

Mr. DENISON. This bill does not say so, does it?

Mr. NIELSEN. I believe it does.

Mr. GRAHAM. But if there were vested rights certainly you could not pass a law to void them. If this cable is landed, it has an entirely different status in law than if it were out in the ocean, has it not? They might claim certain vested rights by virtue of former legislation if it were landed?

Mr. NIELSEN. That is possible. There is another consideration that suggests itself to me that is, I think, a serious one. The President may not have any hesitancy in preventing the company from landing. There has been a good deal of propaganda about this controversy. Now, then, Mr. Denison, if a company does land and has three months within which to get out its permit—lands unlawfully, or at least without legal warrant—I think you will agree with me that if it is operating, and if Americans are sending their messages across it, it would be a very disagreeable undertaking to have to interrupt all that traffic and all that commerce that is going over those wires, when, as a matter of fact, it is possible to determine now, before it is landed, whether it should properly be landed in the national interest.

Mr. DENISON. Yes; but if there is any great national emergency, or an emergency of any importance that would justify it, then there would be no embarrassment. If there is any real reason against the interests of this country that that privilege should be stopped, I do not think the President would hesitate to do it, but he would have a perfect right to do so under the terms of this bill. He would have just as much right to revoke it as he would have to refuse to grant it in the first place.

Mr. NIELSEN. I will agree to that. And the only suggestion I have to make is that if I were to advise as to whether it is the better policy to pass now on the question whether this cable should land, whether it is in the national interest that it should land, or to pass on that question after the cable has been in operation for three months, I would advise that the authority be given to some official or officials to pass on that question now rather than after the cable has been operating for three months.

Mr. DENISON. Why?

Mr. NIELSEN. For the reason that I just indicated—that it is certainly much better to stop the cable from going into operation than to tear it up after it has gone into operation.

Mr. DENISON. Now, in that connection, Mr. Nielsen, are you familiar with the contents of any permits that have been heretofore issued to these cable companies to land?

Mr. NIELSEN. Somewhat.

Mr. DENISON. Do they contain a provision permitting the revocation of them?

Mr. NIELSEN. Yes, sir.

Mr. DENISON. A reservation of that right?

Mr. NIELSEN. Yes; they all generally contain that. There may be exceptions, but I think it is a very general provision.

Mr. DENISON. Of course, if the President, or whoever had control of it, had granted this company a permit to land, that permit could have been revoked, could it not, if there was anything found against the interests of this country?

Mr. NIELSEN. I think so. Of course, I suppose that an Executive would not care to do something which he might start in very seriously to consider revoking as soon as he had done it. He would determine in the first instance whether it should be done or not, and that is all that is in contemplation now.

Mr. DENISON. Since you have mentioned that, I will ask this question: It has been testified here that application was made to the State Department for this permit several months—I do not remember just how long, but it was a long time before the question actually arose, before it got critical; and it rested in the State Department all that time, and the company was given no answer. Now, if there was so much importance connected with this matter, can you inform the committee why the State Department did not act earlier and inform the Western Union of its position? Of course, you may not know anything about that; and if you do not, all you have to do is to say so.

Mr. NIELSEN. Well, I think I know a little about that. I have already told you that it was not a matter of my concern. The first delay occurred, I think, Mr. Chairman, when the company was asked to furnish a copy of this contract between the two concerns and refused for a long time to do so. That is responsible for one delay; there is no doubt about that.

Mr. DENISON. Can you give the committee any information as to when the State Department requested the Western Union Co. for a copy of that contract and the company refused? Is there any documentary evidence of that?

Mr. NIELSEN. I think there is documentary evidence on it in the Senate hearings. I had nothing to do with it; I may not have been in the department at the time.

Mr. GRAHAM. Mr. Nielsen, the question has arisen as to the passage of this Senate bill here, which contains the following section:

SEC. 6. That no right shall accrue to any government, person, or corporation under the terms of this act that may not be rescinded, changed, modified, or amended by the Congress.

As I understood Mr. Denison, he assumes that if we passed this bill and it became the law, even though the cable were landed, the use of it could be stopped, under the provisions of this act. Now, does that necessarily follow, when the act of 1866, under which this company would claim the right to land if the Supreme Court would

hold for them, contains no such clause for the rescinding of the rights at any time? That act is an absolute grant of the right to land, without reserving to Congress any power to do otherwise. Now, if the cable is once landed, could they not very well claim with some show of right that they had vested rights?

Mr. NIELSEN. Well, that is possible. That is a very nice question of law. I do not think I would care to venture an offhand opinion on that.

Mr. GRAHAM. Perhaps not, but what do you think about it? I am not giving any opinion on it. It seems to me it puts them in a very much different position after they have landed their cable than if they had not done so.

Mr. NIELSEN. There is no question about that; and at least it requires a judicial determination—

Mr. GRAHAM. It will entail no litigation?

Mr. NIELSEN. Some kind of judicial action to stop operations. That is clear.

Mr. BARKLEY. In the event the Supreme Court holds against the Government and this cable is landed, then you are in a hiatus between that decision and any law on the subject, and in that event the company is in here lawfully, is it not? If the Supreme Court holds that the President has no authority in the matter and they land, and there is no law against their landing, are they not in this country lawfully?

Mr. NIELSEN. The Supreme Court's decision could be predicated on one of two grounds, I think. It could hold that the President has not that constitutional authority that has been so often asserted, although probably the authority is not specifically defined; but it could also hold that the cable could be landed lawfully under the post-roads act as a general authorization. Now, if it holds that the post-roads act is a blanket authorization, I suppose it need not consider that other question of the constitutional authority of the Executive, and the cable would be, as you say, in here lawfully.

Mr. BARKLEY. And if it is in here lawfully, or by reason of the lack of authority in the President to prevent it, or by reason of the operation of the blanket authority conferred in the post-roads act, then it comes in here and lands and operates in this country just as lawfully as all these other companies that are here by presidential permit?

Mr. NIELSEN. I should say so; yes.

Mr. BARKLEY. Then the President could not revoke the license of this company upon any pretext that would not be applicable to any other company which is in here by presidential permit, could he?

Mr. NIELSEN. I think that is true. Of course, the purpose of the bill is to override in a measure the post roads act, you understand.

Mr. BARKLEY. So that if this cable is landed in this country and operates for 90 days, or for a week, under conditions which make it lawful, then the President could not make an exception of it and revoke its license for any particular reason unless a similar reason might apply in some given case to all these other cables?

Mr. NIELSEN. You mean in the absence of any new legislation?

Mr. BARKLEY. Yes.

Mr. NIELSEN. Yes, sir; I think you are right on that point.

Mr. BARKLEY. Even if this bill should pass he could not do it unless he thought that the circumstances that applied to it, if applied to any other cable in this country, would justify revocation?

Mr. NIELSEN. I should think that the courts would so construe his authority.

Mr. BURROUGHS. Do you understand that under this act, if passed, the President has to assign any reason for revocation? Is not the power pretty nearly absolute in his hands to revoke the license at will?

Mr. NIELSEN. That is a very interesting question. I think Mr. Taggart cited a case this morning in which the courts had laid down certain fundamental principles with regard to the exercise by the Secretary of War of the authority he has under the rivers and harbors act. I would not undertake to say offhand or to make a guess as to what the courts might hold in such a case.

Mr. SANDERS. This is purely a legal question. You say it has been claimed that the President had the power to regulate this matter, to license the cable, to permit them to enter——

Mr. NIELSEN. Yes, sir.

Mr. SANDERS. And that was on the theory that it was a constitutional power of the Executive himself?

Mr. NIELSEN. Yes, sir.

Mr. SANDERS. Now, it is your idea that if this bill is passed it will confer on the President that power which it has been supposed he had?

Mr. NIELSEN. Exactly.

Mr. SANDERS. Do you not think that there is quite a difference between the power that the Executive might have under the Constitution and the power that a legislative body can confer upon him? In other words, if he had the power under his constitutional power as an Executive, it would be broad, it would be arbitrary; but if it is a legislative function and we undertake to delegate a power under the Constitution, then we can not delegate an arbitrary power to the President, can we?

Mr. NIELSEN. I do not know what you mean by the word "arbitrary." If the Executive has the constitutional function, then that function would be determined in the light of the Constitution. If you give him a function, it is of course determined by the scope and effect of the statute by which you give him that function.

Mr. SANDERS. I know, but I am talking about the power. Have we any power to give to the President of the United States the arbitrary right to exclude cables from this country?

Mr. NIELSEN. It is a very nice question. The bill was improved a little, as I said, on that point. I am inclined to think—although the question is not at all without a doubt in my mind—that it would come within the judicial decisions that define what delegation of power is or is not.

Mr. SANDERS. Yes; I am coming to that later. But do we have the authority to pass a law which gives him arbitrary power to do that? Whether the bill will hedge it about is another question. Would you not agree with me that the Congress does not have the constitutional authority to delegate to the President the arbitrary power to exclude or admit cables to this country?

Mr. NIELSEN. I think I would disagree with your view upon that point. The Congress has already given him power to exclude products of commerce from the country on the ascertainment of certain conditions abroad as to the treatment by a foreign country of our products; and on the ascertainment, for example, that a cable could not be landed in France, I think probably the Executive could, under some delegated power, exclude a cable coming from France.

Mr. SANDERS. Of course there is no question of that power. There is no question of our right to lay down a fundamental basis and to say that upon the ascertainment of certain facts a certain thing may or may not happen. But what I am talking about is the cold question whether under the Constitution we have the right to regulate commerce and regulate the admission of cables. I am talking about the cold question of our taking that power entirely away from ourselves and giving it to the President to use his arbitrary will. You see there is a great deal of difference between that and the proposition of giving to the President the power to lay down regulations upon which the question may be determined, and there is some hint at that in some of this legislation. But I am dealing now with the question of our power to delegate to the President the authority conferred upon us under the Constitution to determine this question—arbitrarily. We have a right to determine it arbitrarily; we could by law admit this cable. We could pass a law to-morrow admitting it, but that is legislation. Now, can we delegate to the President the power to act arbitrarily?

Mr. NIELSEN. I doubt that you could.

Mr. SANDERS. I doubt that you could. What I am trying to do is this—

Mr. NIELSEN. Although I am not at all certain that cable connections are commerce to the extent that Mr. Taggart contends, so that you have nothing but a legislative question involved in dealing with them.

Mr. SANDERS. Of course, it is hard to form an offhand opinion, but if it is true that we are delegating to the President arbitrary powers, then section 2 would certainly be unconstitutional, because only Congress would have the right to say that no companies could come in here which had exclusive monopolistic rights in some other country. We can not delegate to the President the power to determine that in one case and then in another case to refuse a company's admission here because it had monopolistic rights, and the next week or the next month admit another company which had monopolistic rights. What I am driving at is, in order to make it constitutional, we must provide that the licenses shall be revoked or issued in accordance with regulations laid down which are general in character.

Mr. NIELSEN. I think you may prescribe the standards. I would be inclined to think that the standards now prescribed are such that he could ascertain the conditions contemplated by the statute and act in accordance with them. That point was rather carefully considered, and I believe it was framed with the idea—at least, in the minds of better lawyers than myself—that there would not be a delegation of power within the definitions of the judicial decisions on this question of delegation of legislative power.

Mr. HOCH. One of the main reasons, as I understand, for the refusal on the part of Secretary Colby was that he regarded this project primarily as an effort of the British company to land in this country. If I remember the testimony of Mr. Carlton, he said that if that be the objection, his company had been ready and willing to take over, under some arrangement—he did not say what arrangement—but under some sort of an arrangement, take over the British cable and make it, as I remember he expressed it, an all-American cable. Do you know, as a matter of fact, whether any proposition of that sort was submitted to the State Department in connection with this application for a permit to land?

Mr. NIELSEN. No; I do not; but I am inclined to think that you are under a misapprehension entirely, Mr. Hoch, on that point.

Mr. HOCH. You mean I am under a misapprehension as to the testimony of—

Mr. NIELSEN. Of Mr. Carlton; yes.

Mr. HOCH. I know nothing about the facts. I am simply attempting to quote the testimony, as I remember it, of Mr. Carlton. That is undoubtedly what he said.

Mr. NIELSEN. In any event, if there was any such plan in contemplation, it has never been worked out, and I think it was found impracticable, if it was ever considered. But, again, you are going into a field of things concerning which I am not informed.

Mr. HOCH. Well, it seemed to me very material, in connection with what the reason was for the refusal. All I was asking was whether you knew, as a matter of fact, that that proposition was involved in the decision on the part of the Secretary.

Mr. NIELSEN. I know nothing about that.

Mr. BURROUGHS. I may be very dense, but I can not yet get it through my head why, under these conditions you have described with reference to these two companies, the American company, starting from Miami, Fla., and running this cable for 1,600 miles to the Barbados, and the British company starting at Brazil and running its cable 1,600 miles, or approximately that, up to the Barbados, and there connecting under this contract that is referred to—I can not understand why it can be said that the British company is getting into the United States through the back door, for that is substantially what I understand it to be by your contention, any more than the American company is getting into Brazil in the same way.

Mr. NIELSEN. I think that I can probably point out the difference. When an American concern would get into Brazil, it would be barred from all interport communications. When the British concern would get into the United States, it could do business wherever it wanted to and connect wherever it wanted to with all ports. There are no monopolistic privileges here.

Mr. BURROUGHS. Is that provided in the contract of the American company? Take a message going from the United States to Brazil. Would not that message be allowed to be transmitted to any point in Brazil?

Mr. NIELSEN. Oh, I think so, yes.

Mr. BURROUGHS. Then, I do not understand.

Mr. NIELSEN. Although, as I say, I do not care to discuss all phases of the cable controversy, what I think may have been in the

minds of Mr. Colby and others is this, that we would like to get a pure American line going down to Brazil that could connect Brazil with the specific points on the coast, and that if this British concern is not allowed to come up to the United States and connect Brazil with points all along our coast, it may some day give up this monopolistic concern down there so that an American line can go down there.

Mr. BURROUGHS. But would the British company, under this arrangement under that contract—which I believe you said you had not read—

Mr. NIELSEN. I have never read it.

Mr. BURROUGHS. But do you understand, under the arrangements between the two, that the British company would have any more rights in the United States than the American company would have in Brazil?

Mr. NIELSEN. I would like to have somebody else discuss that contract; it is so very well known to somebody else, and, as I say, I have never read it.

Mr. HOCH. Does that British company have access to this country now, through the American cable?

Mr. NIELSEN. Mr. Root can answer that.

Mr. ROOT. It has access to the United States through the all-American cable, if it chooses to use it, but so far it has proceeded to check the sending of messages, as far as it could, from Brazil to the United States by arranging discriminatory rates. It adds 24 cents per word to its rate from Brazil to Buenos Aires on every word that is destined to be forwarded from Buenos Aires to the United States over the American line, and that has had the effect of diverting the American traffic coming from Brazil to the United States from the American line to the English line via London or the Azores.

Mr. CARLTON. Mr. Chairman, may I just add one word, in relief of Mr. Nielsen?

The CHAIRMAN. If Mr. Nielsen needs relief.

Mr. CARLTON. With Mr. Nielsen's permission with respect to the question which was raised on the intercommunication of the British and American companies. Does the committee understand that precisely this thing was in existence for years? The Western Co.—that is, the Brazil company—went to the Azores, and the American company built from the United States to the Azores, and there we joined and made precisely the same transfer of messages that we propose in the Barbados, and that continued until the year 1916, and there never was any objection on the part of the Government to that arrangement. Mr. Nielsen should have that in mind in answering this rather delicate question about the interrelationship between the British company and the American company.

Mr. NIELSEN. Well, I have heard Mr. Carlton talk about that Azores situation before, but I am not interested in it. I suggest that if the committee really wants to know what moved Mr. Colby, it might get him, because I can not make any more guesses as to what he did. I never had anything to do with the business aspect of this question.

The CHAIRMAN. Will you proceed, Mr. Nielsen?

Mr. NIELSEN. And I want to point out again that I think, unfortunately—I might say improperly—there has been an effort made here to convey the impression that there were small bureaucrats who were handling this thing in the Department of State, from one administration to another, perhaps. Those things have been said. I dislike to contradict anybody so flatly, but I will contradict a good-natured man like Mr. Carlton by saying that things have not been handled in that way in the Department of State, and are not so handled at the present time.

Now, I would like to talk about the post roads act very briefly. As I said before, the Attorney General once said that was an act of domestic application, and did not apply to cables. That, I think, is a plausible construction of the law. But let us assume that the company's contention is right, that all you have to do, or all that an American concern has to do, is to file its acceptance, then it has a license to land. Then, it seems to me that the intention of that company's representative is very clear, that by amendments which would preserve all rights under existing legislation, they preserve the right to land, in the very paragraph which was intended to give the Executive the control over landing. That is why I say this amendment which they are proposing would be a joker. It is barely possible that you could have a laborious construction to this act, to the effect that, since the post roads act applies only to American concerns, therefore this bill, if it should become a law, would give a blanket license to all-American concerns to land here, and exclude foreign concerns. But all of you know how easy it is to incorporate. I call attention to the Hatian case. Any concern could incorporate here, and, under the law, would be entitled to lay its cable here, although the beneficial interest in that corporation would all be foreign.

Mr. BARKLEY. Are you discussing the amendment to lines 8 and 10, or the substitute—

Mr. NIELSEN. No; the amendment.

Mr. BARKLEY. To lines 8 and 10, which was the original amendment that the chairman referred to this morning as having been agreed to by this—

Mr. NIELSEN. Exactly. Now, then, if I am right on that point, and if power is to be given in the bill to the Executive, any additions to this bill should not be those proposed by Mr. Wilson, but they should be in the nature of a repealing clause, repealing anything in the post roads act in conflict with this bill. Only in that way would the Executive have any authority, and only in that way, it seems to me, would the measure be prevented from becoming nothing but a farce, at least a farce on the face of it. Now, if Congress in 1866, intentionally or inadvertently, or without any thought of the situation of 1920, gave this blanket license to land, it seems to me that it is time that that post roads act should be amended and not preserved, and the bill as now framed would undoubtedly amend it.

Mr. NEWTON. If, under the post roads act of 1866, the Western Union did have the right to do what they planned on doing and which they were prevented from doing, would it not be rather an act of injustice, after they had expended money and had almost completed the work, to take that landing right away from them by legislation?

Mr. NIELSEN. Not at all. I noticed the point was rather seriously argued this morning.

Mr. NEWTON. I did not happen to be here this morning; I was away.

Mr. NIELSEN. This is my position on that. The Western Union Co.'s president talked as if he had been very harshly treated. I would like to analyze the situation that is really before us, and I think I would draw a picture of the acts of the company and of the acts of the Government different from that which he has drawn. It may be that authority exists under the post roads act, but it is a fact, as has been pointed out repeatedly, a long line of very distinguished lawyers and diplomats have held the view that the Executive had the power of exercising that control. I believe this is the first time that the post roads act has ever been invoked by a cable company as authorization for landing, since its enactment in 1866. And I want to point out to you in this connection that the Western Union Telegraph Co. has relied hitherto on a different kind of authorization. Not very long ago they applied for an Executive permit to connect Cuba with Florida. Not so very long before that they applied for two permits to connect the United States with Newfoundland, I believe. And I am inclined to think that it was only when an application of theirs was denied in a single case that they began to rely so very seriously on the post roads act. So when you are told they have relied on these sacred rights in the post roads act, and they have gone to great expense—I have nothing but the kindest feelings toward anybody connected with the company—but when they appeal to your sympathies on that score, I am inclined to think they are not entitled to so very much sympathy.

Heretofore they have always relied on the Executive authority, and I think that when they were blocked in a single instance they began to discover, in the light of very valuable legal advice, that they would rely on another authority.

And I want to point out that this cable was not brought to the United States before they had conferred with the Department of State about obtaining a permit. You have been told that they were so shocked and surprised when they did not get any. As a matter of fact, they were cautioned about the necessity of getting one before that cable ever left England. So I do not take so seriously these arguments about their reliance on the post roads act. I think we are all sorry about that investment, if they are really losing as much as they are telling you. I do not suppose there is a single Government officer connected with the controversy who does not regret that, but there is no reason for anybody to believe that the past administration, or anybody connected with it, was actuated by any motive of animosity toward the Western Union Telegraph Co., nor animated by any motive of great friendliness toward any other company. Mr. Carlton himself pointed out this morning that he was a rather high official under the last administration. He must have enjoyed its confidence, and he must have been willing to serve it. Neither the last administration, to my mind, nor any officials connected with it, acted with the purpose of serving the interest of any concern other than the Western Union Co., but with a conscientious purpose to serve the interests of the people of the United States in harmony with a policy that had been observed in the past.

I have pretty nearly covered what little I had in mind to say about the private acts and this one public act, and I believe I have succeeded in making clear—at least, I hope I have—that Congress would do nothing arbitrary or ruthless or inconsiderate or improper if it made any such acts subordinate to the new legislation.

Mr. HAWES. You have heard Mr. Taggart's statement that they would accept the principle of this bill, and they proposed certain changes. What objection will your department have, if any, to the changes proposed by Mr. Taggart?

Mr. NIELSEN. Well, of course, he submitted changes a little while ago, and I have not had time to consider them. Their general purpose, I should say, is the same as those of the changes submitted by Mr. Wilson. I will not say that anybody is deliberately attempting to put a joker in this bill, but, Mr. Hawes, if you frame a bill with the idea of giving the Executive the authority to control cable landings and then say in the same paragraph which contains that authority that the cable concerns shall act under authorization of Congress, then you give no authority.

Now, then, it has been stated that there would be no uniform policy under this proposed bill. All concerns would come under this legislation. If a cable has not been landed, obviously it would be subject to the provisions of the bill. If some have been landed without a permit, they would be under some control, and obviously it is only sensible that they should be. If a cable of the Western Union Telegraph Co. is operating under this act of 1866, I have tried to point out that there is nothing arbitrary in controlling it, and if it is landed under the post roads act and operating under that act, I think it should be brought under a uniform control.

Mr. HAWES. Do you not believe that the suggestion made by Mr. Taggart does put them all on a parity, all the companies? That is his intention, and it seems to me his amendment does bring about that result. If it does, what objection has the State Department to that amendment? You have that before you?

Mr. NIELSEN. The amendment that he proposes evidently had one specific purpose, and that was to make possible the landing of the cable lying outside of Miami Beach.

Mr. HAWES. Without the presidential license.

Mr. NIELSEN. Yes.

Mr. HAWES. Without that?

Mr. NIELSEN. Yes.

Mr. HAWES. I can understand why you would object to that, but aside from that what objection have you to any of the proposed amendments offered by Mr. Taggart?

Mr. NIELSEN. Well, I do not think they are, in effect, very different from the other amendments. My objection to any of their amendments is that they would preserve the rights under congressional enactments at a time when the Executive would like to have, at least, some kind of a consistent measure under which he could adopt a uniform control of cable landings and cable operations.

Mr. HAWES. Mr. Nielsen, the committee has decided to amend this bill, which means that it has to go back to the Senate anyhow, so if the company has some amendments for its protection, which it wants to propose, I would like to know what specific objection you have to any one of the amendments?

Mr. NIELSEN. I object to anything that makes it impossible to control cables landed under congressional authorization. I think those cables should be controlled in the same way that other cables are in the future, and that, I believe, is the effect of that amendment.

Mr. HUDDLESTON. With reference to the constitutional aspect of this bill, the right to operate a cable which has been actually landed is property, in a constitutional sense, do you not think so, Mr. Nielsen?

Mr. NIELSEN. I think that is probable—at least, the right can not be disturbed without due process of law, under the Constitution.

Mr. HUDDLESTON. In order to cut it off, due process of law would be required. Now, you think this section 2 affords due process of law?

Mr. NIELSEN. I presume that if a concern agrees to let a cable be landed under certain conditions, and accepts the terms—

Mr. HUDDLESTON. You are assuming conditions I did not state in my question.

Mr. NIELSEN. I suppose I did not understand you.

Mr. HUDDLESTON. Well, let us assume for the moment that this post roads act gives the right to land a cable, and under it a cable is landed and goes into operation. No license has been accepted which in any way weakens the right that has accrued. Can you cut off that right without due process of law?

Mr. NIELSEN. I believe not. I do not think you can take property without due process of law.

Mr. HUDDLESTON. In a case of that kind does this bill afford due process of law, so that if there was any such case existing, either under special acts or under that general act or under presidential license, which does not carry with it the power of revocation, it would be impossible to provide any uniform system of licensing or control under this act consistent with the Constitution?

Mr. NIELSEN. It is a very interesting question. On the face of it your proposition seems sound, and yet—

Mr. HUDDLESTON. Let me go a little further. Assuming that the post roads act gives the Western Union the right to land a cable at Miami, and they do actually land it there—this act not having been passed—is not the right to operate its cable a property right which can not be taken away except upon payment of compensation? Will not the Western Union be entitled to the value of their property right if it is cut off by this bill?

Mr. NIELSEN. I would hardly think that under some general act you can give landing licenses that can not be revoked by a subsequent enactment without any violation of the fifth amendment to the Constitution.

Mr. HUDDLESTON. Is it not fundamental that rights may be granted by Congress which constitute a vested interest and can not be canceled or revoked without compensation? That is the law, is it not?

Mr. NIELSEN. Undoubtedly that is the law.

Mr. JOHNSON. Then it does not make any difference whether the right is granted by general act or special act, does it?

Mr. NIELSEN. I think not.

Mr. HUDDLESTON. If the parties acted under the grant and accepted its terms and acquired rights under it, vested rights, those rights can not be taken away without compensation, do you think so?

Mr. NIELSEN. Ordinarily property can not be taken without due process of law and just compensation. Whether the revocation of a right to land a cable on the shores of the United States by legislative enactment would be the taking of property without due process of law and without just compensation, gentlemen, I am not prepared to say.

Mr. HUDDLESTON. That privilege is not different in principle from any other franchise granted by the Federal Government or a municipality or State government, is it? It is not different from the franchise of a public utility company to operate over land?

Mr. NIELSEN. It is not exactly a franchise; it is in the nature of a franchise.

Mr. HUDDLESTON. I said it is not different in principle.

Mr. NIELSEN. It may be different in law. I regard those landings in the nature of a franchise, although I believe there is a Supreme Court decision which declares that such privileges are not franchises. They certainly are very different from franchises. I do not think that Congress ever thought when it enacted the postal roads act that it was giving away franchises by the wholesale.

Mr. HUDDLESTON. The post roads act by its very terms gives the right to construct and maintain over the public domain and along post roads telegraph lines. Do you think that the right can be taken away summarily by an act of Congress without compensation where it has been accepted and the lines constructed?

Mr. NIELSEN. I think that is a very different thing from the franchise to land a cable connecting the shores of the United States with a foreign country. I do not suppose you could take, except by right of eminent domain, property that was created under the authorization of that act.

Mr. HUDDLESTON. Now, the situation we have actually presented to us is one in which, either rightfully or wrongfully, the Western Union has been prevented from landing its cable. There has, therefore, up to this time been no taking of property. If the prevention was wrongful, liability for it is not on the Government; it is on the individuals who did it, and they are as liable as anyone else would be for doing an unlawful act. If this cable is actually landed, then the right will vest; but if, as indicated, it can not be taken away except by due process and compensation, it will present a very different situation after it is landed.

Mr. NIELSEN. You mean, if it is landed under the post roads act, as construed according to the company's contention. If it is not landed under the post roads act—that is, if the post roads act did not give any general authorization to land—I am not so sure that anybody landing a cable without any legal authorization would be considered as having property rights.

Mr. HUDDLESTON. Now, will you consider this aspect of the matter: We will assume that the Western Union owns the land they land on—which, of course, carries with it riparian rights—and there is no law which forbids the landing of a cable, and no presidential authority to prevent it, and they do actually land it, are they not lawfully there, irrespective of the post roads act?

Mr. NIELSEN. That is a very nice question. It was very plausibly argued by the Solicitor General, I believe, although I did not hear

his argument, that you have no right to come into the United States and lay down a cable to connect the shores of the United States and foreign shores without some express legal authority.

Mr. HUDDLESTON. You have got the right to use your own land, and that carries with it riparian rights, where that use is not forbidden, in any way you want to that does not result in damage to any other riparian owner, and in the absence of any prohibition against constructing a landing place, or doing anything else you want to do, you have got the right to do it. Now, if the Government does not assume to take jurisdiction and allows a man to build a pier on his land, has he not a vested right in it?

Mr. NIELSEN. It is a very remarkable use that you make of your land if you use it for the landing place of a cable that runs to a foreign country. I think probably your general proposition—

Mr. HUDDLESTON. Now, does that differ in principle from the landing of a boat which runs to a foreign country?

Mr. NIELSEN. I do not think it differs much, although there is a great difference in the two kinds of landings. Of course, you know we have the right to keep out a boat, just as we have the right to keep out a cable. It is a sovereign right.

Mr. HUDDLESTON. But if the Government does not assume to act and does not forbid it, the landing is lawful.

Mr. NIELSEN. I think you are right on that point.

Mr. GRAHAM. Have you read this contract between the Western Telegraph Co. and the Western Union?

Mr. NIELSEN. I have never seen it.

Mr. GRAHAM. Well, it is here in these Senate hearings on bill 399. I have just had time to glance over it hastily. I just want to ask you something about it. It is dated July 15, 1919. It has this paragraph in it. Section 15, on page 463, reads as follows:

This agreement shall be construed as an agreement made in England in accordance with the law of England, and the rights and liabilities of each of the two companies claiming under these presents shall be regulated according to the law for the time being in force in England, and the Western Union hereby submits to the jurisdiction of the high court of justice and every other competent court in England.

Now, what does that do? Does not that make the Western Union, while it is ostensibly an American company, does it not make it, to all intents and purposes, a British company and under British jurisdiction and subject to British regulations as to its charters, rates, tolls for service, and everything else?

Mr. NIELSEN. I presume so, except in so far as any personal property might be within our jurisdiction.

Mr. GRAHAM. Yes.

Mr. NIELSEN. There is no question that whenever Mr. Carlton seeks to operate in England he will subscribe to conditions there that will be fully as stringent as anything he will ever subscribe to here, under conditions that might be prescribed pursuant to this bill, if it should become a law, and he has so subscribed.

Mr. GRAHAM. What would be the purpose of this American company waiving its American rights and submitting to British jurisdiction? What is the reason for that?

Mr. NIELSEN. I think that others, including Mr. Root, as I stated this morning, have some pretty good views about the relations of

these two concerns. I do not like to talk about things, as I have been obliged to do in order to appear ordinarily courteous, that I really know very little about, because I am only taking your time. Those are very interesting questions, as to the relations between these two concerns and the interest of the British Government in the system. I can not throw any light on that subject that would make it worth your while asking me questions about it.

MR. GRAHAM. I hope that some witness will be able to give us light about that.

MR. NIELSEN. I do not doubt that you will be able to get an abundance of information on that subject.

MR. GRAHAM. That is all.

THE CHAIRMAN. Have you anything more to say in your statement?

MR. NIELSEN. No; I think I will stop. I might have said a few other things, but I have said so many things that I did not expect to say. I do believe that I will just take a very few minutes more of your time, because it seems to me not improbable that a disagreeable impression was created when there was a reference to the use of naval forces in preventing the cable from landing.

We are not here to impeach each other's motives or to raise questions of veracity, but I think we should give each other—and when I say “we” I speak for somebody who is not here—in a way I speak for the department, although I am not responsible for its action in the matter under consideration—I think we should give each other credit for being honest in what has been done in this case. I think that you will all be willing to take the view that Secretary Colby was convinced that President Wilson had the power to control the landing of cables on the shores of the United States under the Constitution of the United States. It was absolutely impossible for any President or any Secretary to have more eminent authority to support that view until he got the authority of the Supreme Court of the United States. Being convinced in that the President sought to exercise that authority, and I know that I may say things that will lead to contradictions, but I invite your attention to the testimony that was given before the Kellogg committee, and I feel confident that there is not a member of the committee who would not reach the conclusion, wrongly or correctly, in the light of evidence, when he reads it, that the Western Union Telegraph Co., having ascertained that it was not promptly to be handed over a permit to land its cable, intended to land it without a permit. That meant, in the eyes of the officials, an attempt to flout the authority of the Government of the United States and to ignore its responsible officials. This cable was laid out 3 miles. You heard something about the notions of more or less unbalanced men who imagined that cables could be landed through the air, I believe, as I pointed out to the officials of the Western Union Telegraph Co. some time ago, that that cable lying out there 3 miles could be landed at least in a day. Now, if that cable could be landed in a day, every member of the committee knows that it would have been an absurd act if the company was attempting to land, and we assumed that it was, and had every reason to assume that it was—it would have been an absurd act to apply for an injunction.

Now, if the Executive had authority to prevent the landing and one Attorney General after another had said it, and one excellent man

had recommended the use of force in a very interesting case on the Canadian border, I submit, Mr. Chairman, that you do not find anything so very high-handed in the action of the Executive, when, on being informed that the company was evidently intending to land, he said, "Stop them by a ship, if necessary," or said, as was stated in the letter which I think has been read here, "Let the Department of Justice"—and he included that department, thinking a legal remedy might be available—"let the Department of Justice, the Department of State, and the War Department cooperate to prevent any flouting of the law." That is what he, in effect, said. He had reason to believe that the law was as he construed it. So that there is nothing that has been so violently done down there at Miami Beach.

Now, so far as control is concerned, I believe that every member of this committee would take the view that I take, that in dealing with this Western Union case, which is very similar to cases which have been dealt with in the past, just as capable and honest men will handle it as ever handled any similar case in the past. You have got to proceed on the assumption that after these men who are so well known have gone out of office the duties intrusted to officials by Congress will be honestly and capably dealt with, otherwise it would be an absurd thing to impose any functions on any officials. I think, and I believe the committee thinks, as the Western Union Co.'s representatives should think, that whatever duties the Secretary of State receives under this law will be discharged in an eminently satisfactory manner. I believe that he will not act alone, and that the Secretary of Commerce and the Postmaster General will be consulted, as it has been suggested that they should be. The President can call on any of his advisers. He can call on the War Department and the Navy Department. And it is a fact that this subject of cable landings involves questions of national security, obviously involves military questions, naval questions, very important questions of American commerce, and questions relating to the protection of American interests abroad, as Mr. Hawes has repeatedly pointed out.

I do not think I will take any more of your time. I am sorry I have taken so much, Mr. Chairman.

(Whereupon the committee adjourned until Thursday, May 12, 1921, at 10 o'clock a. m.)

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COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES,  
*Thursday, May 12, 1921.*

The committee met at 10 o'clock a. m., Hon. James S. Parker (acting chairman) presiding.

Mr. PARKER. The committee will please come to order.

Mr. GRAHAM. Mr. Chairman, before we proceed to the hearing of further testimony I want to make a short statement. After having read the contract referred to by me in my question yesterday, the Barbados contract, between the Western Union and the Western Telegraph Co., I am inclined to think that my intimation relative to paragraph 15 is perhaps not well grounded. On closer inspection of that paragraph it would appear that the agreement by which the companies are to submit their rights and liabilities to the English

courts would be construed only as referring to their rights under this contract and might not be held to extend to any rates or practices or manner of service of the companies in the countries that they touch. I imagine that perhaps that section was drawn with the idea only of conferring jurisdiction on the British courts to determine questions between the two companies as to rights under this contract. I thought it proper for me to say that, inasmuch as I raised the question yesterday.

Mr. TAGGART. I think that is correct.

Mr. PARKER. You may proceed, Mr. Root.

**STATEMENT OF MR. ELIHU ROOT, Jr., 31 NASSAU STREET, NEW YORK CITY, COUNSEL FOR THE ALL-AMERICA CO.**

Mr. Root. Gentlemen, I have had placed on your desks a memorandum, and opposite page 14 of that memorandum you will find a map giving, roughly, the cable lines in South America.

If you will let me, I will address myself for a few moments to the underlying cable situation in South America. Several of the members of the committee asked during the recent hearings for information as to the reason why the Miami line was suspended. I can not tell authoritatively what was in the mind of the President when he decided to suspend it, but I can tell you the nature of the facts which were placed before him by the complaining witness, after hearing which he made his determination not to grant the license; at any rate, for the time being.

Mr. DENISON. Who was the complaining witness?

Mr. Root. The complaining witness was the All-America Cables (Inc.). By the way, somebody asked the other day who the directors of that company were and what the company was, and perhaps I had better clear that up first.

At the bottom of page 18 of the memorandum you will find a list of the board of directors:

Edward D. Adams, John W. Auchincloss, Edmund L. Baylies, R. Fulton Cutting, Robert W. de Forest, William Pierson Hamilton, J. Montgomery Hare, Francis L. Higginson, jr., Daniel P. Kingsford, William A. McLaren, John L. Merrill, John J. Pierrepont, Percy R. Pyne, W. Emlen Roosevelt, Charles Howland Russell, Cornelius Vanderbilt.

Mr. Russell has since died and his place is as yet unfilled.

That is a distinctly American board and there is no question about the American ownership of the company.

If you will turn again to the map, you will see indicated in red—

Mr. MAPES (interposing). Are those men also the principal owners of the company?

Mr. Root. They are very large stockholders. I could not tell you exactly how the ownership stands on the stock books, but there is no question that it is almost exclusively American. There are a few shares owned in Mexico, a few owned in France, and there was until recently a block owned by the so-called British Cable Trust, but that has been sold to Americans; otherwise the ownership is exclusively American. I should think that 98 or 99 per cent of the stock was held in this country and a substantial part of it by men sitting on the board of directors.

The All-America Co. has a series of lines extending from New York and Galveston southward through Mexico and across the Isthmus of Panama down the west coast of South America, across the Andes, and finally up to Santos and Rio in Brazil. That line has been pushed southward and eastward into the territory which used to be exclusively served and occupied by a British company named, I believe, the Western Telegraph Co. I am going to call it throughout the course of this statement the British company, because its name is so much like the Western Union that it is confusing.

The British company lines run from Europe to Rio and Pernambuco and past from those points northward and southward along the shores of Brazil into Uruguay and the Argentine. They also cross the Andes and work up the west coast of South America as far as Lima in Peru.

These two companies did not interpenetrate each other's territory without pretty lively warfare. There has been a struggle going on for the control of the South American cable business between this British company and the American company. This struggle began in 1868, quite a long time ago, when Mr. Seward, who was then Secretary of State, wrote down to our ambassador in Rio requesting his assistance in getting a concession for an American named James A. Scrymser to lay a cable from the United States directly down the east coast to Brazil. Some of you gentlemen will remember about that.

That attempt to perfect an entry into Brazil was defeated by Sir Charles Bright and a number of other English gentlemen who were interested in the Brazilian Submarine Co. and who subsequently organized this same Western Telegraph Co., which I am referred to as the British company.

They defeated that attempt, but the attempt was not abandoned until five years later, in 1873, when the British company succeeded in getting from Brazil a 60-year interport monopoly, which you heard referred to early in the hearings.

The text of that monopoly is given in the Senate hearings and is printed in a somewhat more accessible form in the little memorandum which has been placed on your desks.

At the top of page 40 you will find the gist of the monopolistic features. It provides that for a period of 60 years no other submarine telegraph company shall be established between any point at which the company may have established a station pursuant to this grant and any other point likewise equipped along the entire extension of the northern and southern lines.

The British company under that monopoly linked up all the important coastal points in Brazil, so it is now impossible for any line coming into Brazil from abroad to touch at more than one city. The effect of that is peculiar.

The Brazilian Government, like most other South American Governments, maintains a State monopoly of land telegraphs and operates those telegraphs itself. The standard of operation and the conditions of the lines are such that you can not rely on them for competitive purposes. You get down to Rio over a direct line in an hour or so and it may take you three or four days to go to the next city.

If you are going to collect business from other towns, you have got to do it by cable links operated by some private company.

It is impossible to support a cable line all the way from the United States to Brazil on the business of a single city. You have got to loop up and down the coast and collect business from several points. There is no dispute about that. The Western Union states it frankly in its own annual report, the last annual report, as the reason which caused it to give up its own attempt to get into Brazil with a direct line from the north.

So that the effect of this monopoly was practically to make it impossible for 60 years from 1873 for any American company to run a direct line down the east coast of Brazil, and that monopoly continued in effect until, I think, 1933, about 12 years more.

When the American company found itself blocked in its attempt to get into Brazil from the north, it changed its plans, pushing its lines farther down the west coast of South America and across the Andes to Buenos Aires and again made an attempt to get into Brazil, this time from the south.

The same British company opposed that attempt to enter into Brazil. There was a struggle of uncertain issue from 1885 to 1893, which finally resulted in the British company, backed by British diplomacy, prevailing over the American company, backed by the American State Department, and as a result the British Government got a 20-year monopoly for communication between Brazil and the States to the southward, Uruguay and the Argentine. So that during the continuance of that monopoly it was impossible for any American company to come into Brazil from the south.

This being so, the All-America Co. tried to take messages to and from Brazil over the lines of the British company, carrying them over its own lines to and from Buenos Aires. The British company blocked this attempt by establishing a discriminatory rate. They charged 3 francs a word for carrying from Brazil to the Argentine any message which was destined to be transmitted via the Pacific to the United States; that is to say, which was destined to be transmitted over the American company's lines. They charged 24 cents a word less for carrying from Brazil to the Argentine a local message which stopped in the Argentine.

The text of that concession or contract with the Government under which they were permitted to charge this discriminatory rate is also contained in the Senate record, but there is no dispute about the facts.

The effect of this 24-cent differential was to force the Brazilian business to go to the United States very largely via Europe, instead of coming up over the American lines via the Pacific.

We had to endure that until 1913, when the 20-year monopoly expired, and on the expiration of that monopoly there began another very lively legal fight and diplomatic fight between the British company, backed by its own foreign office, and the All-America Co., backed by its own State Department, to get into Brazil from the south, and the American company succeeded finally in getting not a monopoly to go in from the south but an open contract, which anybody else could have a duplicate of, and it did run its lines from Uruguay and the Argentine up to the cities of Rio and Santos; and here you will notice an interesting thing.

The interport monopoly made it necessary for the All-America Co. to run two separate lines up to Santos and Rio. It could not go up to Santos and then link along to Rio, because the interport monopoly forbade it.

It is perfectly obvious that the expense of that method of access forbids its being extended to the other Brazilian cities. You can not run separate lines to all these towns up the coast—Bahia, Pernambuco, and Ceara—and you can see how much more serious it would be coming down to Brazil from the north with a long line.

As soon as we got into Rio and Santos, in Brazil, the British company began an attempt to get permission from the Government to establish a differential rate between Bahia, Pernambuco, and Ceara and the points in Brazil which we reached. That attempt has not been successful yet, but they are making it. If they get a message in Bahia routed via the All-America Co., they now disregard the routing directions, take the message all the way down to Buenos Aires over their own lines, and still insist on charging the 24-cent differential against us. So that they are applying what I believe to be an illegal discriminatory rate for the purpose of keeping the American company from getting access to the north Brazilian towns over their lines.

Moreover, this British company has during the course of the present year instituted a suit in the courts of the Argentine Republic which has for its purpose the interruption and removal of the American lines now operating between the Argentine and Rio and Santos. They are actively engaged at this moment in an attempt not only to keep us out of the north of Brazil but put us out of those ports of Brazil which we have already reached.

I do not blame them. I do not blame them for carrying on that fight. They are within their rights. It is a part of the game of international competition for trade.

Let me touch for a minute on a more general situation which this affects, and which I think is in the mind of the Executive.

The British realize perfectly well that this country has in it the capacity for a great effort in foreign commerce. They remember still the days before the Civil War when we were equal competitors of theirs. Then the Civil War occurred, and through an unfortunate series of incidents with which the British were not entirely unconnected we lost our foreign carrying trade, and we have never been able since, until the outbreak of the recent war, to overcome the great advantage which they had by being in possession. We had never been able to overcome that advantage and get back to the position of carrying our own goods in our own bottoms. The war has now given this country an opportunity which may not occur again for another generation of getting back on to the sea and resuming participation in the carrying trade, and the country has made a very great effort to take advantage of that opportunity.

I think the figures of the Shipping Board show that the Government alone has put something like \$3,500,000,000 in ships, and nobody knows the contribution of the private firms.

The British are bound to make every effort to prevent that attempt of ours from succeeding, and they are past masters in the game of

competition at sea. It is not a matter of ships alone. It is a matter of a good Consular Service, of coaling stations, of branch banks, and it is a matter of communications, and in that latter category the most important element is the cable. They understand that they have got to get to the ports where they trade with their own cables, and I do not blame them. I do not blame their company for making the hardest fight possible to keep the Americans out of the east coast of South America. I have no reproaches; but they are doing it, and there is a death struggle on for the control of the South American communications situation.

The All-America Co. had its first indication that it was going to succeed in getting into Brazil from the south late in 1916.

I told you that after the 20-year southbound monopoly ran out in 1913 we began a litigation to get in from the south. That went against us in the lower courts, but late in 1916—November 22, I think it was—the judgment below was reversed and there was rendered a judgment which indicated that ultimately the All-America Co. would get its right to enter from the south.

Just before that decision was rendered the Western Union Telegraph Co. approached the All-America Co. with an offer for the acquisition of its lines, and there was some negotiation in regard to it.

I think there was at the time some question in the minds of the All-America directors as to whether the Western Union was acting entirely for its own account or whether there might be some connection between its offer and the straits in which the British company in Brazil seemed likely to find itself. I have no more light on that now. Nevertheless, the making of that offer is significant, taken with what happened afterwards, because it indicates an inclination on the part of the Western Union Co. to be discontented with the existing status of things in South America.

I may say that the offer was refused and the war intervened, and there was a gap of a couple of years during which nothing startling was done in the South American field.

Then the war terminated and Mr. Carlton went to London and had a series of conferences with Sir John Pender, a very distinguished and able man, who is the head of the great British cable industry—the Harriman of the British cable world.

Those conferences resulted in the negotiation of a contract, the text of which is inserted in the Senate record at page 399. I am not going to read it now, because it is too long, but it is worthy of study.

The All-America Co. was notified of the negotiation of this contract by a series of cablegrams from Great Britain and a series of letters from Mr. Carlton. One of Mr. Carlton's letters gives a summary of the contract as far as it affected the All-America Co. I am going to read you that letter, if I may. It is dated New York, March 20, 1919, and you will find it on page 32 of the memorandum, and may I, in passing, urge upon any members of the committee who are interested in the underlying question to read that whole correspondence, because it gives, more than any single letter can, the atmosphere of the negotiation of that contract.

I call special attention to this letter because a large part of the argument which follows refers back to the facts which it states:

THE WESTERN UNION TELEGRAPH CO.,  
New York, March 20, 1919.

JOHN L. MERRILL, Esq.,  
*President Central and South American Telegraph Co.,*  
66 Broadway, New York.

DEAR MR. MILLER: In reply to your inquiry of the 19th instant, clause 11 of the drafts of heads of agreements states—

This reference is to this contract between the Western Union Telegraph Co. and the British Co.—

“During the subsistence of this agreement neither company”—

That is, the Western Union or the British Co.—

“shall interest itself either directly or indirectly with the working of any system which shall be in competition with the system of cables to which this agreement refers.”

That system of cables is the Barbados line, for the construction of which this contract provided.

“It is mutually agreed that in the event of the Central & South American Telegraph Co.”—

That is the old name of the All-America Co. The name was changed about a year ago—

“desiring to come into agreement with the parties hereto that the terms of such an agreement shall provide for the withdrawal of the Central & South American Telegraph Co. from the east coast of South America excepting the Argentine Republic, and that the Western Co. shall sell or lease to the Central & South American Telegraph Co. its lines and cables excluding Buenos Aires to Valparaiso and including Santiago (Chile Government), and along the west coast of South America, and that thereafter the Western Co. and the Western Union shall regard the Central & South American Co. as a partner with all the rights and privileges of an exclusive traffic arrangement within its territory.”

Now, the gist of that, gentlemen, was that this was an offer to the All-America Co. to give up the attempt which the All-America Co. and the United States Government has been engaged in since 1868 to get American lines into Brazil, and to substitute for that two great monopolies—one American covering the west coast of South America and one British covering the east coast of South America.

The agreement also provides—

Now, we get to what was to happen in case the All-America Cables stood out and refused to become a party to this agreement to partition the South American Continent—

The agreement also provides that in the event the Central & South American Co. will not come in, then the Western Union may call on the Western Telegraph Co. to meet it at the Isthmus of Panama—

That is to say, to come up the west coast as far as Colon—

thereby giving the Western Union access to the Western Telegraph system on the west coast of South America.

That is to say, the first thing they were to do was to have the British system extended—if you will look at the map you will see the effect of this—from Barbados on one side of the continent all the way around the continent up to Panama on the other, and that system was

to be connected by two short American links owned by the Western Union with the United States. That is the physical aspect of the plan.

While I have no authority—

MR. GRAHAM (interposing). Mr. Root, the British line on the west coast of South America is up as far as Lima?

MR. ROOT. Yes; up as far as Lima, and this letter indicates that the Western Union may call upon them to extend it from the Lima to Colon so as to make the British loop around the continent complete, and if you will study the contract you will notice that the traffic agreement indicates the same thing.

While I have no authority for saying so, I believe, if you decided to come into such an arrangement that the Western Co.'s line from Buenos Aires to Valparaiso might also be included—

That is to say, that our monopoly might be extended a little bit—

although I very much doubt if the Western Co. would agree to transfer this line on so short an arrangement as 10 years. If the time were extended, however, I think they might part with this connecting link.

Under the agreement, as I have told you, the Western Co. lays a cable to Barbados and we meet them there.

That is the other end of the extension.

An arrangement is included for a division of rates and for interchange of traffic and for the fixing of such rates as may be necessary to meet competition, etc. The Western Union agrees—

Now, this is the next important step.

The Western Union agrees to handle all traffic arising in its area in North America and destined for South America and not specially routed, as well as all unrouted European traffic for South America, to the Western Co., and the Western Co. agrees to a reciprocal clause with respect to United States business originating in South America.

That is a provision which means that the vast telegraph business collected by the system of the Western Union all over the United States is to be diverted over these two short connecting links to the British cable system in South America to the complete exclusion of the American cable system in South America, and when you realize that the All-America Co. is exclusively a cable company, not a collecting company, you will realize how serious was the menace of that prospect. It was a very grave thing. Our principal contributor of messages up to this time has been the Western Union Co.

Each company undertakes to give no advantage to any other service that it does not give to South American-United States service.

Having regard to the importance of establishing this direct service by the earliest possible date, both companies undertake to use their best endeavors to complete the same before the end of 1919.

The companies further agree to introduce deferred and week-end services and press rates.

I think the above covers about all that is of interest to you in considering the whole subject. Obviously, if you desire to negotiate an arrangement with the Western and the Western Union, you would have some matters not in the heads of agreement local to your own company, and which would, I dare say, be provided for.

As to the purchase of the cable, the type would be left to you, and the price is based on cost at the date of order plus 10 per cent on the actual cost of materials, labor, and factory overhead, but no administration or organization expenses. Messrs. Deloitte, Plender, Griffiths & Co. are named as the arbiters.

Faithfully, yours,

NEWCOMB CARLTON.

The All-American Co. considered that offer for about a month. It was too serious to act on over night. And they finally rejected it in a letter which you will find printed in full, giving the reasons, on page 36. I am not going to read it, but it is an interesting document. They talked to Mr. Lansing as to whether, in view of the danger to their continued existence, which was implicated in the things which were to be done in case they refused they might not be justified in accepting the monopoly of the west coast in giving up the east coast, and Mr. Lansing said to them, stick to it and get into Brazil. And acting partly, to be sure, from the sense that their position could be made good, but very largely with the sense that they did not have the moral right to give up this effort in which they had been engaged so long and had been so helped by the Government—very largely with that sense—they refused the offer and they are still sticking by their refusal. So, whatever comes to them, ultimate success or ruin out of this controversy, it will come to them partly because they have adhered to a course of conduct in which they were encouraged and which they adopted at the instance of the Government of the United States.

There are some other things which help to indicate the scope and purpose of the agreement between the Western Union Co. and the British Western Co. Some time ago Mr. Williver, one of the officers of the Western Union, told Mr. Merrill, the president of the All-America Co., that, in his judgment, after the Barbados line was completed the Western Union would no longer honor the routing directions on telegrams; that is to say, would not honor them via the All-America. That is, if a person sending a cablegram in Chicago should distrust the British-South American line and should want his cablegram to go down to South America over the All-America line, and should file his cablegram in the Western Union office in Chicago and mark it "Via All-America," the Western Union would send it down by the British line, disregarding the routing.

There was quite a controversy about this, the right to do this, before the Senate committee, and there was a suggestion that there should be legislation similar to the railroad legislation to compel respect for routings, so that if an American citizen desired to use a certain cable line he could hand his message into the telegraph office and have his desire respected. Mr. Carlton testified before the Senate committee in opposition to the proposition of having routing legislation. I think you will find his statement on page 114 of the Senate testimony. He made a good argument, but it is perfectly clear what he intends to do. Let me read from it:

Mr. CARLTON. No; if you mean by that what Mr. Rogers referred to as the recognition of the via. I do not go that far. I believe we ought to treat the public, so far as transmission is concerned, all alike, but I do not think it is reasonable to expect us to consent to some one else selecting our partners for us. For example, suppose we have a complete system in South America through association with another company—

Which is a fact.

I believe the business we collect at our offices here—

That is, in spite of the "via"; that is the point he is arguing.

is entitled to be sent over our own system, and I do not believe it is reasonable that our offices should be compelled to act as the collecting and delivering medium of a competing company that uses those offices by means of the via.

I believe that the use and recognition of the via by a land-line company should be entirely a matter of contract and should not be a matter of law. To force a wire company to accept a partner does not work out, and it never will work out unless you plan the land lines under Government operation.

It is useless to read all that. The purpose is clear enough. He suggests a solution for those cable companies which have not their own collecting system. He says:

Here the field is free and open. A cable company can make their own terminal arrangements by means of wires leased from telephone or telegraph companies or they can string wires of their own. It is perfectly simple. If a cable company wants to compete with our system, they should not expect us to furnish the vital part of the system—the receiving and delivery offices.

He is quite right; it is a vital part. He is proposing to deny to us the use of it. You do not appreciate what that means.

The St. Petersburg Telegraph Convention, which is in force in all the civilized world except the United States, provides that the via must be respected, and everywhere except in the United States the via is respected. I will read you the provision:

When the sender has prescribed the route to be followed the respective offices are bound to conform to his instructions unless the route indicated be interrupted or is known to be overcrowded, in which case the sender can not make any complaint on account of the employment of any other route.

Except in case of overcrowding, all over the world, except in this country, you are obliged to respect the via.

Mr. BARKLEY. What are you reading from, Mr. Root?

Mr. ROOT. I am reading from Article XLI of the St. Petersburg Telegraph Convention as revised in Lisbon. I have not the text of all of that document; but if you are interested in it, anyone in the State Department can procure a copy. It is the standard operating convention outside of the United States.

Mr. HOCH. When was that?

Mr. ROOT. 1908, I think the Lisbon revision was made.

Mr. HOCH. Were the German companies represented in that convention?

Mr. ROOT. Generally speaking, all of the European countries, all of them, and nearly all of the South American States. I am not sure that not all were represented, and I think the eastern countries, China and Japan. It is almost world-wide.

Mr. TAGGART. All Government telegraphs?

Mr. ROOT. In many of them they have Government service.

Mr. TAGGART. All Government telegraphs; indeed, in all.

Mr. ROOT. But not Government-owned cable service.

Mr. TAGGART. The cables are not in it, as I understand it, except as controlled by the Government.

Mr. ROOT. The same rule has prevailed among the American telegraph companies in the past.

Mr. NEWTON. Were we represented at the convention?

Mr. ROOT. We never signed. We were represented. The existence of that is an indication of the sense that the civilized world has respected the via. We have always respected that right in this country. Congress, by a statute, which you know very much better than I do—the interstate commerce act—has provided, under certain restrictions,

for the respect of the via right by railroads. I will read you that; it is section 15—

Mr. NEWTON. Any other cable line touching this country to any of the interior telegraph companies respect the via right—that is, going over to Europe do they respect the via right?

Mr. ROOT. I think they generally respect it now.

Mr. TAGGART. No; I do not think so.

Mr. ROOT. There is a question whether they shall respect the via right with respect to wireless telegraphy, and there are exceptions; but, as a general rule, I think they respect the rights.

Mr. TAGGART. That is not the fact, as we understand.

The CHAIRMAN. If you will withhold, Mr. Taggart, we will permit you to bring that up later.

Mr. TAGGART. Yes, sir.

Mr. ROOT. Section 15 of the interstate commerce act provides:

That the shipper shall in all instances have the right to determine, where competing lines of railroad constitute portions of a through line or route, over which of said competing lines so constituting a portion of said through line or route his freight shall be transported.

I think the position of the Western Union on routings backs up the implication of the contract. I think there is little doubt—there certainly is no doubt in the financial world or in the cable world—that it is the purpose of the Western Union Telegraph Co. and the British company to punish the All-America Co. for its refusal to become a party to this scheme for the division of South America by putting the All-America Co. out of business.

Now, whether that be true is not a question on which I am here to produce formal evidence; that is a matter to be thrashed out before the Executive; but if that charge be true, then you will see at once that you have before you a crisis vitally affecting the future of American trade in South America. If the American company is forced to the wall it will not lose its South American lines to the Western Union Telegraph Co.—it will lose them to the British company.

If Sir John Pender did enter into this contract for the purpose of substituting the Western Union Telegraph Co. in South America for the All-America as his competitor, he would be worse off instead of better off, because instead of having a company with a capitalization of \$30,000,000 he would have a company with a capitalization of some \$250,000,000 competing with him. That possibly has been talked over between those gentlemen, and it is clearly indicated by the traffic provision of their contract that on the collapse of the All-America Co. it is Sir John Pender who will rule the sacrificed lines and not the Western Union. I believe, and perhaps the Executive fears, that there may be a loss to the British of the whole American telegraph system in South America. I think the Executive may be more sensitive about that on account of the general cable situation. Before the war our position in regard to cables generally was better than it is to-day. The Japanese action in regard to Yap has made worse our system of cable communication with the Pacific. The disruption of the German cables and their diversion to British and French harbors has deprived us of our chief means of access to Europe, except for the lines through Great Britain. If the British

company succeeds in breaking down the system in South America, I think it will be true that with the exception of one line across the Pacific and two French lines across the Atlantic, which have been so operated that they are of little value for commercial purposes, we will have no cable line connecting us with any continent which does not either pass through British territory or relay over British lines.

Mr. WEBSTER. Mr. Root, has the All-America Co. any connection in South America with companies enjoying monopolistic privileges in South America?

Mr. ROOT. Yes, Mr. Webster. May I explain that? I was going to come to it later. In the first place, the All-America Co. has its monopolies in South America. To begin with, in Mexico we are parties to a contract with the Western Union and the Mexican Government under which the Western Union has a monopoly to the carrying out of Mexico—all of the Mexican-foreign telegraph business. You will find that contract in the Senate record. The All-America Co. under that same contract has a monopoly for carrying from the coast of Mexico all the cable business. That is the contract which dates back, I think, to 1897. The All-America has in addition one single land telegraph line from Vera Cruz to Mexico City, but the general situation in Mexico is a monopolistic condition in that the Western Union Telegraph Co. has all external telegraph business and the All-America has all external cable business. That means from Vera Cruz to Galveston. At Galveston we are bound under the contract to give all the messages to the Western Union Telegraph Co. On the northwest coast of South America, from Colombia to Lima in Peru, we have a substantial monopoly. The French have a monopoly in Venezuela on the east coast. The British have a monopoly in Brazil and claim a monopoly for communication between Argentina and Brazil. But this latter one has recently been broken down in litigation. The situation was that Great Britain, France, and the United States encouraged their citizens to get all the exclusive rights they could. The British were far more successful than we were. They not only got monopolies which were much more important than ours on the east coast of South America—that is the rich part of South America—but they got in the Far East, in China, and in the Near East a vast system of cable and telegraph monopolies. We do not blame the British for that, and we should not be blamed for the monopolies which we secured.

Mr. SANDERS. Are these monopolies in perpetuity?

Mr. ROOT. No, sir; they all run out in the course of the next few years. Ten years, I think, will see almost all of them defunct. The British monopoly on the east coast is one of the longest. The importance of this Brazilian situation and the whole of South America is from the fact that in our attempt to resume the carrying trade, getting into foreign commerce, the next 10 years will be vital. The opportunity will not last. There may arise a general question as to whether the monopolies that the Western Union and the All-America enjoy in Mexico and in the northwestern part of South America, whether those monopolies should not be modified or given up. If the Executive comes to the conclusion that they should be given up, I for one am ready to see them go. I believe that is the sentiment of the All-America Co. For that reason I am here advocating the passage

of a bill which will put it into the power of President Harding to make us give up these monopolies next month if he wants to, because we have a cable line landed on our coast at Galveston without any license.

Mr. JONES. How does that harmonize with the statement made yesterday in regard to preventing the Western Union from having any landing in Peru?

Mr. ROOR. Mr. Jones, we are now engaged in a life and death battle against a combination consisting of the Western Union and the British company. While that combination is keeping us out of Brazil by the assertion of a monopoly, we should not relax any right either against the British company or the Western Union Co. If a bargain can be made with Great Britain whereby there is a clear sweep of all monopolies, that ought to be done. But we should not be forced out of our monopolies by the British and their partners until they relinquish their far more stringent hold on the world cable situation. But that question is not before us now. If the Executive wants us to give them up, we will give them up; at any rate, the Executive will have it plainly within his power to make us do that by the legislation which we are now urging.

Mr. HOCH. You spoke of your contract in connection with the delivery of cable messages from Mexico at Galveston, and I understood you to say that under the contract you were obligated to deliver all messages to the Western Union.

Mr. ROOR. Yes, sir.

Mr. HOCH. Is that regardless of the direction which might be given in Mexico? Suppose the sender of a message in Mexico enters a via specifying delivery by some other company, would you still be obligated to deliver the message to the Western Union at Galveston?

Mr. ROOR. No; I do not think we would. I can not answer that question, sir. Most of these messages originally come over the Mexican Government's own land lines. What the attitude of the Mexican Government is toward the via I do not know, but certainly if we got a message with via directions written on it we would honor them. If we did not we should deserve to get into trouble.

Mr. HOCH. You can not deliver it to the Postal Telegraph Co. at Galveston?

Mr. ROOR. I can not tell you. I think that is a fair and pertinent question, but my memory of the contract is not sufficient. I never heard that question raised before.

Mr. WEBSTER. Will you please give me the benefit of your opinion as to the economic wisdom of the Government's policy of denying connections with companies enjoying monopolies abroad?

Mr. ROOR. Yes, sir; I will be glad to.

First, let me say something as to the scope of that policy, because I think it has been very often misstated. Every one would admit that it would be perfect folly to attempt to deny entry to an American company because it had an incidental connection, we will say, at London or at Paris with some telegraph company which had, we will say, in the Far East a monopoly. That would break up the entire cable system of the world if you tried to do it. The Western Union Telegraph Co. tells the truth when it says that there is not a cable landing here which does not somewhere have a connection with a

monopolistic system. That is true, and you have to admit it. On the other hand, if you are going to have any policy, any trading policy, denying, for instance, entry to a French line here until they let an American line enter there, you can not allow that policy to be nullified by permitting the French company to land through the device of having the last 10 miles of its cable owned by an American company. I think it is clear that the line of distinction lies between those two points; it is a question of reasonable degree.

I think the true statement of the rule is this: An obiter dictum of the Executive goes beyond this, but the true statement of the rule is that a foreign company should not be permitted to land on our shore which enjoys rights abroad injurious to American cable companies, and it should not be permitted to land by means of an American line laid for that purpose, as an adjunct to connect such a foreign system with the United States. The difference between, we will say, the connection of this British Western Co. at London with the Postal line or with the Western Union line and the connection of the Western Union Co. with this British cable company at Barbados is that in one case, in the case of the connection at London, we have a great self-sustaining cable system, which has business offices in London and incidentally connected with the British company, while at Barbados you have a line laid as an adjunct for the sole purpose of getting in this unjust monopolistic system. This case is similar to the Haitian case, in which the Western Union came down and endeavored to prevent the entry into the United States of an American incorporated line which was gotten up, or laid, at any rate, for the purpose of effecting a connection between the United States and the French monopolistic system which runs from Brazil and Venezuela up to Santo Domingo.

Mr. WEBSTER. It has been suggested by Mr. Carlton that prior to the negotiations between his company and the British company concerning this through connection the cost of transmitting a cablegram by your company was 85 cents a word, that shortly thereafter the cost was reduced to 65 cents a word, and that under the terms of the agreement between the Western Union Telegraph Co. and the British company the cost will be 50 cents a word. It occurs to me that there might be good and bad monopolies.

Mr. ROOT. I think there is some truth in that statement and some false emphasis in it. The old rate to Brazil, before we got in, was 85 cents a word. That was necessitated on our part by this discriminatory British 24-cent charge. We had to take that out, that extra charge out of our own company. The moment we got in we opened up with the 65-cent rate and the Western Union insisted on saying that we reduced our Brazil rate out of fear from foreign competition. That is not true. We opened at the 65-cent rate just as soon as we could, and we would have made that reduction sooner if we had any way to get rid of that extra charge. The rate is now 65 cents over our line—and theirs because they have had to meet it. If we could get that monopoly out of the way and run our direct line, whether the Western Union was present or not, we would cut the rate to 50 cents. If the Western Union gets its direct line it will cut to 50 cents. If they get a direct line and keep a monopoly and we can not build a direct line, we will have to come down to their rate, even if we do it at a loss.

Let me get back to what I was saying a moment ago.

I want to call your attention, gentlemen, to some debates which occurred in the legislative council of the Barbados as emphasizing the fact that this proposed Western Union line is only a catspaw. On page 1 you will notice some bold-faced type in the middle of the page. I wish you gentlemen could read it all, but I will only take time to pick out some interesting spots. The original of this document, by the way, is in the evidence before the Senate committee. The British company planned to build all the way up and then got suspicious and changed their plan and the assembly in Barbados was alarmed at the change of plan, they did not like the fact that part of the line was to be turned over to the Western Union Co.

Mr. Yearwood says—

Mr. SANDERS (interposing). What page are you reading from?

Mr. ROO. Page 2:

That was a British company, entirely, purely, and absolutely. But from some cause—and I believe, sir, the cause is that the American Republic does not wish foreign cables to be placed on its shores—the idea that the Western Telegraph Co. had to bring a cable from Brazil to Barbados, and then carry it from Barbados to Key West or Miami, had to be abandoned, and that cable has been taken over by the Western Union Telegraph Co., which is an American company.

And then, over on page 3, the Hon. C. P. Clarke says:

As far as I am aware, the Government are not opposed to legislation of this sort. As far as I understand the matter, the telegraph line proposed to be laid down by this company will be supplementary to the line of the Western Telegraph Co. which has already received a concession. We have already passed a bill in favor of that company permitting them to lay a line from South America to Barbados. As I understand it, this will be a supplementary line connecting with North America.

And on page 5 you will find some more remarks by the Hon. T. W. B. O'Neal:

And it was our impression—at least it was my impression—that that company would lay cables from Barbados to Florida or some other port in the United States of America. Apparently, however, the United States Government objected to this British company, called the Western Telegraph Co. (Ltd.), laying cables in America. They prohibited the company from doing so, and so it comes about that the Western Telegraph Co. has associated itself with the Western Union Telegraph Co.—an American company—so as to enable this cable to be continued from Barbados by the Western Union Telegraph Co. to the American shores. That is the reason for this new bill.

And over on page 7 we find the Hon. T. W. B. O'Neal enlightening us again:

With regard to the objection which my honorable friend has raised, all I can say is that I have nothing whatever to do with either company myself. I take it, though, that the British Western Co. would be quite willing to proceed with their work and carry the cable on to the American shore if they had been allowed to do so by the United States of America. But they were unable to do so, and so they had to join up with this Western Union Telegraph Co. So far as I can see one company is complementary to the other. They can not get on one without the other. The Western Co. can not get work in Barbados. Their objective is in America—Florida or Key West or some other port.

Now, the reason why there is a distinction between the connection, we will say, of the Western Union or the Postal with this British company at the Azores or in London and the connection at Barbados is that in the first case the connection is incidental (and it would be

unreasonable to go as far as forbidding incidental connection), and in the second case the Western Union is nothing more or less than a cat's-paw, used as a device by this obnoxious British company, which has been keeping us out of Brazil for half a century, to get in a line which they could not get in directly.

Mr. DENISON. Mr. Root, why can we not just as well say that the Western Co. is a cat's-paw to enable the Western Union to get into South America? Why can you not say one just as truthfully as the other?

Mr. Root. You could, if the Western Union people had been keeping the British line out of here. But the British in Brazil have no complaint against the Western Union. It is we who have been injured. If the British had been injured here and had a cause of complaint, they might well object to having the Western Union get in by an English company.

Mr. DENISON. Let me ask you in that connection, do we not get access to the eastern part of South America, Brazil, through this connection, which we otherwise could not get?

Mr. Root. We do, sir. Wait a minute; no. I answered your question, sir, before I heard the last word. I was impetuous. I think that we do not. We get for the moment a connection which we can not otherwise get, but if the connection is not allowed, I think nothing is more certain but that the British cable monopoly in Brazil will shortly break down and that we will have access freely with our own lines.

Mr. DENISON. What do you mean by "break down"?

Mr. Root. That it will be given up by the British company. I had it on my notes to proceed to that point next, when I was questioned.

Of course, that is an essential part of the underlying situation. What is the use of opposing this British line if there is no hope at all of getting into Brazil, opposition or no opposition? You oppose it because you think your opposition will lead to some good result, and I will address myself to that now.

Mr. DENISON. If you have any reasonable ground upon which to state to the committee the reason why we may reasonably expect that the British company will soon give up its monopoly, personally, I would be very glad to hear you.

Mr. Root. Let me begin by saying this, Mr. Denison: Of course, the British company asserts that it will never give that monopoly up, whatever is done about it. They would be poor traders if they did not do that. I think we may disregard that assertion and make the assumption that they will from time to time do whatever their own intelligent regard for their own self-interest and prosperity dictates. We must treat them as reasonable beings and decide that they will do that which is best for them, irrespective of what they say now, as a matter of bargaining.

The situation is this: If the United States Government stands firm and says, "That line shall not be landed until you give up your monopoly," the British company can keep their monopoly and keep a complete and exclusive access to the north Brazilian cities, but that will involve their competing over their long line via Europe for the business of Rio and Santos and Sao Paulo, Santos being the port of

Sao Paulo, a very large city. Those cities contain in themselves, we believe, two-thirds of the Brazilian-American business. Mr. Carlton believes it to be 85 per cent or 75 per cent.

Mr. CARLTON. Seventy-five per cent.

Mr. ROOT. We believe two-thirds. They will also have to compete through their via Europe or via Azores connections for the business of Uruguay and the Argentine and that business is very great. That is to say, by keeping their monopoly they will have an absolute hold on about one-third of the Brazilian business, and they will lose the business of Rio, of Santos, and of Sao Paulo, which is two-thirds of the Brazilian business, and all the Uruguay and Argentine business, because they can not compete, sending their messages via Europe, in point of time and service with the American line. I do not think the Western Union really thinks, and I do not think any cable man honestly believes that the British Western Co. will hold onto that monopoly after they once are convinced that the American Government will not let them land until they give it up.

In the famous fight with the French company, that French company held out and insisted it would never give up until a bill was introduced in Congress and then they came down. They struggled for years to get into the United States and Haiti, but when it finally became obvious that the United States Government meant business, they came down and gave in.

You can not succeed until you take a clear, definite, final position, and that has not been taken yet.

Mr. DENISON. Then let me ask you this question: Am I justified in saying that they are giving it up when they permit the Western Union to come in and get into South America via Barbados?

Mr. ROOT. Mr. Denison, I do not think so.

Mr. DENISON. Why is not that giving up the monopoly?

Mr. ROOT. There are two things: One is giving us access over their lines and the other is giving us access over our own lines, and you ask me, in substance, whether that does not amount to the same thing. Does it really matter whether we are going to have access over our own cable lines to South America, anyhow? Does it really make any difference? Suppose this combination is successful in what I believe to be its purpose; that is to say, the purpose of compelling a sacrifice to the British of the American lines in South America. Suppose they do succeed; what of it? Does it matter whether we own those lines or whether we send our messages down there over the British lines? Does it really matter? Is it worth all this fuss and worry?

I think it does really matter, and I would like to produce a little evidence on that. I am embarrassed in this because I feel sure that there is in the possession of the executive departments information far more complete and accurate than any private company has in its hands as to the difference it makes whether our messages go down to the British lines or on our own lines.

I will give you a little intimation of just what I mean. Take the commercial question first. You will find on page 182 of the Senate hearings the testimony of Capt. Hill.

Mr. DENISON. He is the attaché referred to yesterday?

Mr. ROOT. He is the attaché who was referred to, a captain in the United States Navy, of unimpeachable veracity, whose business it

was to check up on this sort of thing and to report to the United States Government.

Mr. JONES. Will you tell us, Mr. Root, what the relations between Mr. Boyd and Mr. Hill are as to their respective offices? Who is the superior officer?

Mr. ROOT. I understand Mr. Boyd was a reserve officer who, during the war, for a brief period, went down to Brazil and sat on the board of censors. Whether he was chairman of that board for a time or not, I do not know. Mr. Hill, so to speak, was a permanent adjunct down there.

Mr. JONES. Has there not been raised before our committee a question of veracity or a question of conflicting statements as between Mr. Hill and Mr. Boyd?

Mr. ROOT. There is a hearsay statement by one of the witnesses that he heard Mr. Boyd say that something which Mr. Hill said—no; not exactly that—that he heard Mr. Boyd say that so far as he knew there was not any trouble of this sort. He did not say Mr. Hill was not telling the truth. If we had him here on the stand and could ask him questions, he probably would say he either did not know about these cases or that Mr. Hill was right. At any rate, you can get more information than I have on this, because Mr. Hill has been reporting from time to time directly to the Executive. It was his business to report. He testified before the Senate committee from memory of acts transpiring in the past, and he testified quite unexpectedly. He happened to be in Washington. You will realize it is hard to get testimony up from Brazil. It takes a good while.

Mr. HAWES. Was Mr. Hill a military attaché?

Mr. ROOT. Yes, sir.

Mr. HAWES. That was his official position?

Mr. ROOT. Yes, sir.

Mr. HUDDLESTON. Mr. Root, there was no statement from Mr. Boyd in that hearing?

Mr. ROOT. No, sir.

Mr. HUDDLESTON. And he has not appeared before this committee?

Mr. ROOT. He has not.

Mr. HUDDLESTON. And what we have is merely the statement of Mr. Carlton that Mr. Boyd said something to him on the subject?

Mr. ROOT. Yes.

Mr. HUDDLESTON. That is all.

Mr. ROOT. Yes.

Mr. GRAHAM. Where is Mr. Boyd now?

Mr. ROOT. I think he is in New York, sir.

Mr. GRAHAM. What I was trying to get at was whether he was accessible to this committee or not.

Mr. ROOT. I think so. I think this question that has been raised is vital to the controversy; that is, whether the Executive is right or may be right in feeling that it makes a difference to this country whether we get to any given port in the world directly over our own line or whether we have to relay over a British line. If it does not make any difference, then we are all wasting time.

Mr. GRAHAM. Is Mr. Boyd now in the employ of the Government?

Mr. ROOT. I do not know, sir; I had not heard of him until yesterday.

Mr. GRAHAM. What are his initials?

Mr. ROOT. I can not enlighten you on that.

Mr. CARLTON. May I supply that information? Mr. Boyd's full name is William Young Boyd.

Mr. GRAHAM. And his address, if you please.

Mr. CARLTON. His address is Goethals, Boyd & Co., New York. He is a partner of Gen. Goethals in some Central American or Cuban enterprise, or an enterprise at Panama, I believe. I may say, for the information of the committee, that when I talked with Mr. Boyd last week and he volunteered what I told you yesterday, he told me that he was about leaving for Habana, and I assume he is there, but will soon come back. I do not think he is in New York now, but is probably on his way to Habana.

Mr. NEWTON. Mr. Root, did this trouble, such as Capt. Hill describes, exist before the war, or was this something that grew out of the war and has been continued since then?

Mr. ROOT. As far as Capt. Hill's testimony goes, I think it relates to the war period and the postwar period.

Mr. NEWTON. That is what I understood, but I did not know but what you had information yourself that this practice was in effect before the war but not so extensive.

Mr. ROOT. If you want from me a hearsay reaction, I would like to say I believe there was fairly general suspicion on the part of American business men that there was something wrong before the war. It got very much worse during the war and the tricks which were learned during that period have not been given up yet.

Mr. NEWTON. Of course, they probably took advantage of their power under the war censorship.

Mr. ROOT. Yes. You change laws but customs do not always change with them.

Mr. SWEET. I understand, Mr. Root, you are now addressing yourself to the broad proposition as to whether it would be detrimental to the business and commercial interests of this country to transmit messages over the British line as compared with an all-American line?

Mr. ROOT. Whether it would be detrimental as opposed to a completely American line?

Mr. SWEET. Yes.

Mr. ROOT. Yes, sir; because that is an essential part of the whole argument. If that is untrue, the whole position of the all-American company and the whole interest of the Government falls.

Mr. COOPER. Mr. Root, may I ask you a question there? You may have made this statement before the committee when I was not here, but are there any messages that go to South American now that are not received by some British line?

Mr. ROOT. Yes, sir.

Mr. COOPER. What line is that?

Mr. ROOT. Messages to Cuba, to Mexico, to Central America, to Colombia, Ecuador, Peru, Bolivia, Chile, Argentina, Uruguay, and Rio and Santos in Brazil go over completely American-owned lines.

Mr. COOPER. And the British do not receive any of those messages?

Mr. ROOT. They do not get a look at them.

Mr. DENISON. Do messages sent from here to China and the Orient go over British lines?

Mr. ROOT. I believe that they are distributed over British lines. You have gotten me out of the field that I am really familiar with when you get me into the Pacific—or into Europe, for that matter—but that is what I believe to be the case. The British have a pretty general stranglehold on the communication service. Our position is better in South America than anywhere else in the world, so far as cables go, and it is a sore spot with them.

Mr. MERRITT. Is it true, Mr. Root, at the present time, irrespective of the lines and who owns them, that the business between North America and South America is as well served now as it would be after this connection at Barbados has been made?

Mr. ROOT. Let me be frank on that. I think that the landing of the Barbados line would create a temporary improvement in the communications of the United States with northern Brazil, and I think we would sacrifice forever any chance of getting in with our own system directly, a chance which we will succeed in very shortly if we stand firm.

Mr. MERRITT. As I understand it, this British Western Co. has a network of cable lines all through Brazil?

Mr. ROOT. No, sir; it has no land lines at all. The Brazilian Government has a strict governmental monopoly of land telegraph lines. What the British company has is a system of submarine cables looping up and down the coast.

Mr. MERRITT. So that if that coast monopoly were broken, then American lines entering Brazil would be on all fours with the British lines or any other lines?

Mr. ROOT. Yes, sir; and that is all we are asking. Break that coast monopoly and we will go down there with a direct line, and, except Venezuela, which remains to be dealt with, we will have a complete line around that loop to every port. The Executive has been fighting for that for 50 years, and it is on the point of winning if it is given a chance to trade, and it wants a situation in which it can trade. It does not want to have that power taken away from it.

Let me go back to this fundamental question very briefly. But first let me urge that, if you are interested, you make your appeal for information, which I can not produce, to the State Department and to the Military Intelligence Department. Let me read from the testimony of Capt. Hill:

Capt. HILL. F. K. Hill, captain, United States Navy, on the retired list.

The CHAIRMAN. Were you a naval attaché in South America during the war?

Capt. HILL. I left in April and arrived in Rio de Janeiro in May, 1917; I remained there until July of this year, 1920.

The CHAIRMAN. While there did you have any complaints of American merchants and business men about their messages being delayed or turned over to British merchants and traders?

Capt. HILL. I did; many of them.

The CHAIRMAN. Many complaints?

Capt. HILL. Yes, sir.

I think we ought to remember that Capt. Hill is an old naval man and unbiased, so far as we are concerned, and though what I say and what Mr. Carlton says proceeds from brains deeply biased on this subject, Capt. Hill was merely testifying in the course of duty.

The CHAIRMAN. Did you investigate any of them?

Capt. HILL. I did, as far as it was possible under the conditions.

The CHAIRMAN. Can you name any definite complaint?

And he has some difficulty, very naturally, as he continues his statement, in remembering the details:

Capt. HILL. I wrote official reports on the subject, and I mentioned the particular character of cases in those reports—

And I wish to urge that in executive session or in some other manner the committee get access to those actual reports—

One of the most glaring that I remember was the case of a bid for certain electrical goods. At least, the company in the United States was asked by its representative there—that is, in Rio—to submit a bid on a certain definite list of electrical goods, and before the answer came to him the Brazilian who was getting this bid came to the agent of the General Electric man and said, "I have a bid here on the very same articles which you were asked to bid on from an English company. How did they get that list?"

This had gone down over the British line, of course.

The answer by the General Electric agent was that he did not know. Then a bid was made by the English company which was lower than the American company's bid, but was not accepted by the Brazilian, and he accepted the original bid as it came in first by the General Electric Co.

I am not going through that testimony, but the fact is that there is the assertion by unbiased officials that the business community down there was complaining and that it believed the secrecy of its messages was not preserved, and its messages were in certain cases delayed on purpose.

Mr. GRAHAM. Mr. Carlton stated yesterday, as I understood him, that he thought that was true during the war and while there were censorship on these various cable messages, but that he did not think the practice existed, as I understood him, in peace times; in other words, that it arose out of war conditions and began with the war and ended with the war. What do you think about that?

Mr. ROOR. I can testify only from hearsay, sir. I think that the practice was worse during the war than it is now, but I think that there still continues to be general complaint and general belief both among the exporting houses and the American merchants in Brazil that their messages are still abused, and I think there is a suspicion that something like that happens in Great Britain.

Mr. GRAHAM. Is there any censorship of cables in these offices by the British Government or other officials in peace times?

Mr. ROOR. There is nothing that we would call a censorship. What their method of doing this kind of thing is, I do not know. There are competing firms in Brazil, we will say agents dealing in machinery, and a message is sent out in code by the American firm to somebody in the United States. If you give that code message without decoding it to a British firm, all you have to do is to hand it over and they will decode it fast enough. They will get what they want out of their competitor's message. Any company is glad to get its competitor's code messages.

Mr. WEBSTER. Mr. Root, how are messages passing from the United States to France at this time handled at the French terminals?

Mr. ROOR. They go over American cable lines, mostly, to the coast and there they are taken up by the French Government telegraph

lines and the French Government gets a complete opportunity for inspecting everything we send in, and it is one of the causes of complaint of the American companies. It is, I understand, one of the reasons, not for the particular urgency of this bill, but one of the reasons why the Government wants this bill is that they want to treat with the French for our own lines up to Paris and to the great industrial centers.

Mr. WEBSTER. In other words, if this connection should be established at Barbados, our situation in South America would be identically the same as it is in France to-day, with the exception that in one instance we would be transmitting through a British concern and in the other through a French concern.

Mr. ROOR. Yes, sir; but with this practical difference: I have said before I thought it was a matter of degree. I know you can not lay down exact philosophical distinctions, but in one case our line runs all the way to France, and in the other case I have no doubt, in view of the way in which the line was started, that it is simply part of a plan to get in a monopolistic line. I have no doubt, further, that if the United States Government is empowered under this bill, it intends to take up with the French this same question and insist on having ceded to our own lines going over to France the same rights which the French lines enjoy here.

Mr. WEBSTER. But, Mr. Root, the principle involved is not altered, either in degree or in any other way, is it, by the physical fact that the line may extend from the coast of our own country to the coast of France instead of extending out to Barbados and there making a connection with the coast of South America; the physical difference does not alter the principle, does it?

Mr. ROOR. No. Wait a moment; let me make one other remark. This cable law or this rule about cable landings, it seems to me, has been administered in very much the same way in which the criminal law is administered. The rule has laid dormant until somebody has been injured by it and has come to the Government and complained, and wherever there has been a real injury and a complaint, the rule has been enforced. In the case of France, the existence of the American line across the ocean is injuring nobody here; no American citizen is being deprived of his rights by the existence of that line. It is the French line that is inflicting the injury. I mean, it is the interruption of the French line that can be used as a lever for getting our rights. You do not interrupt the Postal line to France because you can not get anything by that. If the Postal line, to use a slang expression, was in cahoots with the French and you could break the French monopoly by stopping the Postal line, the Government ought to do it; but it can not. It must interrupt the French line in order to get that monopoly out of the way, and I think it will do that.

Mr. WEBSTER. If the Government is to be consistent in the application of its policy of refusing connections between companies denying us equal rights on their shores, we should apply the doctrine to the French line just as you are asking us to apply it to the South American line, should we not?

Mr. ROOR. With this exception: I think, fundamentally, you should, sir, but I think that the French situation is less bad because

they do let you go to the French shore and link up and down the coast as much as you please, which is denied to us in the case of Brazil. We would make no objection to the existence of the Brazilian land telegraph monopoly because such monopolies exist nearly all over the world. Nearly all Governments have them, although England does not. England allows you to have your own lines. The restriction as to land lines is so general that we have gotten used to it; but Brazil goes a step farther. It will not let us build cables where we want to on the coast, whereas France allows us to do that. The original fight with France was for the purpose of getting free access to the French ports, and when we got that the Government rested content for a while. They had not thought of going to the point of trying to break up the inland telegraph monopoly, and we are not asking them to break up the Brazilian inland telegraph monopoly. We simply want free cables.

MR. WEBSTER. I made no pretensions in diplomacy, Mr. Root, but just to the mind of a layman this thought occurred: It might involve considerable delicacy to insist upon the preservation of the integrity of our communications passing over the British connections while we make no complaint over a similar situation where the connecting line is French.

MR. ROOT. Possibly, although I must say I notice in Capt. Hill's testimony that the complaint was about the British use of their lines and not as to the French use of their lines?

MR. JONES. With regard to the disclosure of confidential codes, is not that largely a question of the honesty or integrity of the employees?

MR. ROOT. I think that could be controlled by the company.

MR. JONES. In other words, you would have disclosures by a dishonest employee, whether it is an all-America company or whether it is a combination line?

MR. ROOT. That is true, sir, but the company can control that.

MR. JONES. Do you mean to assume that the Western Union Telegraph Co. encouraged a disclosure of these messages that were transmitted over the Western Union line?

MR. ROOT. No, sir; I do not think that for a minute.

MR. JONES. How could they control it any more if they had a line of their own?

MR. ROOT. If the British monopoly were given up, the all-America or the Western Union would go down and actually run the offices, and the messages would not have to go over the British system.

MR. JONES. But I suppose the employees would be the same employees, whether it was an all-America line or a combination line?

MR. ROOT. No, sir. For instance, the all-America system would not employ a man now serving the British line.

MR. JONES. You might employ a Brazilian?

MR. ROOT. Yes, sir.

MR. JONES. He might have the same interest to be gained by dishonesty, irrespective of his employer?

MR. ROOT. We have been in Brazil and we have been in Argentina, and we do not get complaints about the disclosure of American messages by our employees or the employees of the Western Union, but we get continual complaints about the disclosure of messages by em-

ployees of the British company. I think that the company is able to control its employees by and large and on the whole.

Mr. HAWES. Are you at all familiar with conditions in Brazil?

Mr. ROOT. No, sir; not except some phases of the cable business.

Mr. HAWES. You do not know that there is a large German colony in Brazil?

Mr. ROOT. I know that.

Mr. HAWES. And that they control banks, mercantile companies, etc.?

Mr. ROOT. Yes, sir.

Mr. HAWES. Do you know further that during the war, with hardly any exception, these businesses were taken over by the English and not by the Americans?

Mr. ROOT. Yes, sir.

Mr. HAWES. Do you not know that the cable connections largely controlled the superior advantage of the English over the Americans in taking over this property?

Mr. ROOT. That may well be true.

Mr. HAWES. Do you know that there is a big German colony in Brazil?

Mr. ROOT. Yes, sir.

Mr. HAWES. Their property was taken over by the Brazilian Government?

Mr. ROOT. I am not sure of that, whether there was official action in taking it over.

Mr. HAWES. Do you happen to know that the property held by the German bankers and other enterprises, with scarcely any exception, was handed over to the English residents, and not to the American residents?

Mr. ROOT. I have an impression that that was true, but I have no direct knowledge of it.

Mr. HAWES. The Capt. Hill whom you speak of is the naval attaché in Brazil?

Mr. ROOT. Yes, sir.

Mr. HAWES. It is his business to report to the Government from day to day all occurrences transpiring in Brazil?

Mr. ROOT. Yes, sir.

Mr. HAWES. Especially as to all means of transmission of messages, etc.?

Mr. ROOT. Yes, sir.

Mr. HAWES. That it is his official duty to do, day by day, and to make a report to the naval intelligence of his observations?

Mr. ROOT. That, I believe, is his duty.

Mr. HAWES. This other gentleman whom you speak of was a temporary official in the United States?

Mr. ROOT. No; he was down there during a portion of the time.

Mr. HAWES. During a portion of the time?

Mr. ROOT. Yes, sir.

There is something that I have been trying to get to on the fundamental question—

The CHAIRMAN. Be good enough to indulge Mr. Hawes until he finishes.

Mr. ROOT. Certainly.

Mr. HAWES. During the war, as a matter of fact, in nearly all the South American Republics the business of Germany, where it was suspended or interfered with because of the war, was transferred to English control largely all through Latin-America?

Mr. ROOT. I believe that is so.

Mr. HAWES. And the banking facilities as well?

Mr. ROOT. Yes, sir.

I have given you just a few indications of the possibility of commercial disadvantage which might be involved in the transfer of the American cable facilities in South America to the British. Let me touch now on the question of what might result from that from a diplomatic point of view.

Mr. Carlton testified in connection with this subject on pages 313 to 317 of the Senate report. His testimony relates to matters which transpired in Great Britain, and from what happened there we can get an inkling of what might occur in South America without our own lines:

The CHAIRMAN. Mr. Carlton, as I recollect, when you were on the stand here a couple of weeks ago or so you made the statement that all commercial messages were turned over to the Navy Department in Great Britain, but that you did not know whether that included Government messages or not. I would like to know whether that does include Government messages or not.

Mr. CARLTON. If you do not mind, I would like not to answer that. I would like to explain why I do not want to answer. It puts my company in a very embarrassing position with the British Government. We have large affairs with the British Government and with various departments, who treat us with every consideration.

Then I turn to page 317, where the discussion breaks out again:

The CHAIRMAN. Mr. Carlton, if you would just as soon answer that question, I think I shall insist upon it.

That is the same question.

Of course, you may answer it or not, as you please, and you may make any explanation you desire about the reasons why you turned the messages over. I think we ought to know whether they are turned over or not.

Mr. CARLTON. I think, on the chairman's insistence, I must answer the question, although I do it reluctantly.

I must first describe what takes place. It appears that the British Government was desirous of supervising in and out cable messages to certain European countries in the interest of British peace and quiet. In order to avoid an appearance of discrimination against these European countries, they decided to take charge—physical charge—of all in and out cable messages from every country, and they therefore adopted the plan of waiting 10 days—that is, to give 10 days between the handling of the message and the time the Government called at the cable offices for the messages. The messages were then loaded in large bags, sealed, I believe, and put in wagons. Those wagons were driven away under the custody of the Admiralty—

You will please notice that the Admiralty is the official decoding agency of the British Government—

under the custody of the Admiralty, and lodged overnight in a storehouse, and returned to the cable offices the next morning. So they were kept—they had actual custody of the messages but for a few hours, and, so far as the United States messages were concerned, only as a matter of form, to make the custom uniform for all countries. We have further investigated and are satisfied that during that period not a single message—commercial, diplomatic, or otherwise—has been actually handled by the naval intelligence bureau, and that their contents are unknown to the British Government because of that fact.

The CHAIRMAN. Did you ever notify the American Government that their messages were being turned over to the British Government?

Mr. CARLTON. I wrote to Mr. Davis; he will have my letter; I have not a copy. I told Mr. Davis that the messages were being turned over to the British Government after 10 days and that they were being kept but a few hours. I think you will recall that, do you not?

Mr. DAVIS. Yes; but I understood that letter spoke of commercial cable messages. It did not speak of our own messages.

Mr. GRAHAM. Are you referring to the Assistant Secretary of State?

Mr. ROOT. Yes, sir; Mr. Norman Davis, the Assistant Secretary of State.

Assume that the British Government did not read any of those messages, but the official decoding agency of the British Government did take actual possession of diplomatic dispatches which are supposed, under international law, to be inviolate. They did that after the war, at a time when there was a state of peace, outside of Russia. It may be that they did not read them, but a country, after such an occurrence, has the right to entertain a suspicion as to the inviolability of its diplomatic correspondence.

Mr. HUDDLESTON. Was that done with a view to uniformity in the handling of messages of all countries; was that the excuse?

Mr. ROOT. The excuse they gave for it?

Mr. HUDDLESTON. The messages of all other countries were in sealed bags and were taken away?

Mr. ROOT. I do not know about that.

Mr. HUDDLESTON. What would be the sense of such a practice of censorship? There would not be any, of course; and, on the other hand, the excuse would not be a valid excuse unless the messages of all countries were handled in exactly the same way.

Mr. ROOT. Yes.

Mr. HUDDLESTON. Under those circumstances I think the Federal Government should secure some further statement.

Mr. ROOT. I think they have from the officers of the State Department. I read you what Mr. Davis said in regard to this transaction.

Let me say one other thing: There is another question involved that is a question of interest to the Government in time of war. If you will turn to page 310 of the Senate record you will find a brief item that I think throws more light on it. I will read it to you [reading]:

Mr. DAVIS—

This is Mr. Norman Davis again speaking of the British cable company of Brazil. [Reading:]

They have exercised their power, I feel, very unadvisedly at certain times, and it is a matter of considerable concern to us. During the war the British Western Cable, or this Western Cable Co., refused to receive from the Central and South American company—

That is the All-America Co. [Reading:]

at Buenos Aires our Government cable dispatches sent to Admiral Caperton's fleet at Montevideo, and as a consequence of their refusal to receive such war messages all of our telegrams had to be transmitted from Buenos Aires to Montevideo by the German Telephone Co.

Now, the company which resorts to that extreme is not to be relied upon by this Government for communication with its ships and consulates in time of war. The Executive has a right to suspect that there is a difference between the efficacy of an American-owned sys-

tem and a British-owned system. When we have that kind of an occurrence the Executive has the right to have an opportunity to consider the evidence and decide whether they want to send messages over a British or an American line.

That is just an illustration of the intensity of the hostility which the British company developed toward our system there, but it indicates what may happen if we do not own our own lines.

Mr. GRAHAM. I notice a little further in this testimony that even after they found out that this practice was being indulged in and our diplomatic representatives took the matter up, as the testimony shows, and made representations about it, still the British diplomatic representatives persisted in their refusal to accept the messages. That is on page 311.

Mr. ROOT. Yes, sir.

Mr. GRAHAM. Mr. Davis said there [reading]:

After we discovered this practice, representations were made to the British minister at Buenos Aires, and even after that the British company refused and still refuses to take private commercial messages without severe discrimination, although it is contrary to the Argentine law.

Mr. ROOT. Yes, sir; I believe that to be true.

Mr. GRAHAM. Even at that time we were associated in war?

Mr. ROOT. Yes, sir; we were associates in war. But this struggle for the control of communication between the American and British companies has developed heat on the part of the British company. It was a silly thing to do. It indicates the animosity.

Let me add one more thing. I think it is the general consensus of the world that it is an advantage to have your own cable line right straight through to the point where you want to trade.

Mr. JONES. Has the Western Union Telegraph Co. built its own line to Rio, or Santos, or St. Paula, or to any point in Brazil, where they have a right to build?

Mr. ROOT. They have not.

Mr. JONES. Why?

Mr. ROOT. There are two things involved in this report: First, the old-mooted question about the connection of a foreign monopoly by cat's paw link with this country, and another broader question, the question of whether it would not violate the provision against monopolies and against combinations in restraint of trade. I think this combination between the Western Union Telegraph Co. was an illegal combination between the Western Union Telegraph Co. and the British company for the purpose of putting out of business their competitor in South America. Of course, it was not made in the United States and, perhaps, I therefore should withdraw that, but the combination was sufficiently opposed to public policy to justify the exclusion of the line.

Mr. JONES. If the Western Union or any other cable line, outside of the All-America, should not build a cable to the east coast of South America, then the All-America would have absolute control of the only cable line from the United States to South America?

Mr. ROOT. Not exactly, sir. The Brazilian business passes now entirely via the Azores or Europe or Venezuela.

Mr. JONES. You expect the South American Continent to have a cable on the western coast?

Mr. ROOT. Yes, sir.

Mr. JONES. If this cable is not laid or another cable is not laid from the United States down the Atlantic to Brazil, the All-America Co. would have the exclusive cable control of South America on the eastern and western coasts?

Mr. ROOT. No, sir. The cables from the northern part of Brazil would continue to go to Europe or to the Azores and then come back to the United States—that is, the Brazilian-United States business would continue to go over that line. The Venezuelan business would continue to come here over the French line.

Mr. JONES. You have the exclusive direct route down the western coast?

Mr. ROOT. If no other line were laid and the British held onto the monopoly, I think we would get away from them all the business of Rio, Santos, Sao Paulo, and Argentina, and all countries to the west as far as the United States business was concerned. I do not believe that they would hold their monopoly after they were convinced that they were confronted with that situation. If they held their monopoly, it is true we would get away from them all the business south of Rio.

Mr. JONES. Suppose the eastern monopoly were removed, would you then oppose the building of a cable to Brazil?

Mr. ROOT. No. We would be glad to have it come in parallel and compete on equal terms. That is what we are asking.

Mr. SANDERS. Assuming that the legislation carried out the purpose of preventing any monopolies or any concessions which amounted to monopolies in foreign countries, do you think that that would encourage or discourage the building of cable lines in the future?

Mr. ROOT. I think it would greatly encourage it.

Mr. SANDERS. Very frequently in this country we have granted franchises for a term of 50 years for the building of street car lines.

Mr. ROOT. I realize that.

Mr. SANDERS. And we have granted franchises for other purposes for the purpose of encouraging enterprise, and I am just wondering if the British company had not obtained a monopoly whether they would have built the line?

Mr. ROOT. In the beginning, possibly not. Possibly that was the situation with regard to all the monopolies in the beginning. If we could break up that British monopoly in China it would be a good thing.

Mr. SANDERS. In the case of a franchise granted to a street railway company in a city, after it has run for a period of 10 years you might get better transportation by doing away with the franchise, but whether it would be wise general policy is the question.

Mr. HAWES. As I understand the situation now, your company is fighting for equal rights in South America, and by the passage of this law you expect to have the assistance of the Government in securing the extension of the American service in Latin America, something you have not now?

Mr. ROOT. I can not say what we expect the Government to do or what we hope they will do, but we do expect by the passage of this law to get a full and fair hearing before the President, who has the power to give us relief if he thinks we are entitled to it.

Mr. HAWES. At the present time the English companies have the support and backing of the English Government?

Mr. ROOR. They certainly do; very vigorously.

Mr. HAWES. And you want to secure equal backing with the English enterprise in Latin America; is that right?

Mr. ROOR. Yes, sir.

I have one more thing to say. I do not believe that it would be moral for any government to curtail the time that remains of the British monopoly. I agree that it has a vested right to its property, and you ought not to take it away. That is not what we are doing with the British company. If the Government stands firmly and does not let the cable land and says to them, "We have wanted to get into Brazil for 50 years. Every time we have tried you have kept us out. You want to get in here. We will give you free entry here for entry there." That is a fair exchange, not a destruction of vested rights.

Mr. HAWES. I suppose you have seen some of the amendments suggested by Mr. Taggart to the Senate bill. Have you any objection to those amendments; and if so, would you state what they are?

Mr. ROOR. Yes, sir. I have a course of procedure in my mind and I do not want to get too far away from the development of the main field. I will come to that. It is on the list.

Mr. NEWTON. At the present time the All-America Cable Co. is not so situated that it can handle to advantage messages to all points in eastern South America.

Mr. ROOR. That is true.

Mr. NEWTON. If this bill passes substantially in accordance with its term, what position is the All-America Co. going to take as to just what conditions should be embodied in the license permitting the Western Union Telegraph Co. to come into this country?

Mr. ROOR. I am not going to speak of the Western Union generally, but of this one line, the Barbados line.

Mr. NEWTON. Yes.

Mr. ROOR. I think that the Government should come out and definitely say, "We will not grant a license for the landing of that line until the British company gives up its Brazilian monopoly," and I think very shortly after that it would give it up. There is no other course open.

Let me make another admission. This act of trading or bargaining for the right of an entry there involves a temporary inconvenience. To say to them, "If you let us in there we will let you in here," is just and is a fair exchange. Whenever anybody starts to make a bargain and announces just terms that he is willing to take, if the other fellow chooses to be a hard bargainer and stands out, that entails temporary inconvenience; but if you are not ready to stand a temporary inconvenience for the sake of getting justice in your bargain, you are going to be made a butt of imposition by everybody who trades with you.

Mr. HOCH. I do not want to turn you aside from your argument, but do you propose to discuss before you finish the question of the difference in the situation, as far as the bargain is concerned, before and after the landing is made. Assuming that the Supreme Court sustains the decision of the lower court, and assuming this legislation is passed, I want to know whether you have in mind to discuss

whether there is any essential difference in the situation before the landing is made and the situation afterwards, in view of the power of revocation.

Mr. Root. Yes; whether, in other words, there is any real need for haste. Yes; I am going to discuss that. That is essential also.

Mr. Chairman, there is one thing I am going to suggest to you, if I may. I have not yet reached the question of whether haste is imperative or not. I am going to get to that to-morrow, but I have a suggestion would like to make now. We think that haste is vital; the Executive thinks that haste is vital, and can we not hold this thing in status quo by having the committee now report a brief bill to this effect: "For a period of 30 days from the passage of this act no person shall land a submarine cable on the shores of the United States without a permit from the President," and let that go to the Senate?

The CHAIRMAN. I think that would involve some considerations which perhaps you would not find easy to work through the committee—practical in their character and theoretical at the same time.

(The committee thereupon adjourned until Friday, May 13, 1921, at 10 o'clock a. m.)

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COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES,  
*Friday, May 13, 1921.*

The committee met at 10 o'clock a. m., Hon. Samuel E. Winslow (chairman) presiding.

The CHAIRMAN. Mr. Root you may proceed.

**STATEMENT OF MR. ELIHU ROOT, JR., 31 NASSAU STREET, NEW YORK CITY, COUNSEL FOR THE ALL-AMERICA CO.—Resumed.**

Mr. Root. Gentlemen, let me spend one moment in outlining my program for the morning, because it may tend to give advance notice that some questions which will occur to you are going to be answered later on.

I want to take up first certain questions which have been raised as to the bill—first of all, the question in regard to the delegation of legislative powers. That is a question which I think Mr. Sanders raised.

Then I want to take up the question of whether there is involved in the bill any improper confiscation of property without due process of law and compensation.

Then I want to pass for the moment to the question of whether, aside from the law and aside from legal restrictions, there may be any injustice involved in the passage of the bill, owing to the fact that the Western Union may have committed capital, without notice of the pendency of trouble.

Then I will pass to the question of whether there really is any substantial, practical necessity for expedition in getting the bill through or whether that is a delusion, and then I will say a word as to the concrete amendments proposed by the Western Union.

Let me say, first, on the matter of delegation, that that question has received quite a little attention. While the bill was growing

and taking the form which it had when it left the Senate, I think there was a feeling that the Senate bill, as first reported, was a border-line case, because the test which it laid down, according to which the President's power was to be exercised, was very broad. That test was this, "the Secretary of State may withhold such license when, in his judgment, such action promotes the interests of the United States," and the granting of the license was to be determined by the same test. The only test was whether the action promoted the interest of the United States, and we feel that that was a border-line case. In the present bill you will notice that the test, while broad, has been made more definite than in the original Senate bill. The present test is not merely the promotion of the interests of the United States. It is as follows:

That the President may withhold or revoke such license when he shall be satisfied—

Here is the test—

that such action will assist in securing rights for the landing or operation of cables in foreign countries—

That is the first test and is more definite than merely general interests—

or in maintaining the rights or interests of the United States or its citizens in foreign countries—

That is broader but still more definite than merely the general interests of the United States; and thirdly—

or will promote the security of the United States.

I have produced here the two hundred and fourth volume of the United States Supreme Court Reports because that volume contains the Union Bridge Co. case, which is a compendium of information both on this delegation point and on the confiscation point. I will cite you other authorities, but if one wants to get a starting point, the Union Bridge Co. case is an extremely good one from which to begin.

Mr. NEWTON. Two hundred and fourth United States.

Mr. ROOT. Two hundred and fourth United States, page 364.

Mr. NEWTON. What was the other party besides the Union Bridge Co.?

Mr. ROOT. Union Bridge Co. v. United States.

On page 380 of that case you will find a little résumé of the early legislation which involved the question of the delegation of legislative powers, and the court cites, with approval and with an obvious indication that it considers them valid, a number of early statutes. I give the syllabus of the statutes in the words of the court, because it is extremely brief and clear.

The first is the act of June 4, 1794. That was back in the days when the tripartite division of governmental powers was fresh in everybody's mind and everybody was interested in it. That act empowered the President to lay an embargo on all ships and vessels in the ports of the United States, and they quote the test from the act:

Whenever, in his opinion, the public safety shall so require.

And that, I take it, is very much like the provision in regard to the security of the United States in this act.

And under regulations, to be continued—

This is quoted from the statute—

to be continued, or revoked, "whenever he shall think proper."

Now, that is an extremely broad test. I think that test, if it is good, and the Supreme Court seems to think so, would let in the Senate bill in its original form, and would certainly let in the bill in its modified form now before the committee.

Here is another act, the act of February 9, 1799, authorized the President—

To remit and discontinue, for the time being, the restraints and prohibitions which Congress had prescribed with respect to commercial intercourse with the French Republic—

And here is the test quoted from the act—

if he shall deem it expedient and consistent with the interest of the United States.

The court says that makes it incumbent upon the President to determine the fact, is it or is it not consistent with the interests of the United States, and having determined the facts, he acts? That is very broad, but it falls within their general rule.

Here is the act of December 19, 1806, which authorized the President—

to suspend, for a named time, the operation of the nonimportation act of the same year; "if, in his judgment, the public interest should require it."

It does not say he must, but says he may if the public interest shall require it. That is his test, and it is as broad as the test in the original Senate bill.

Here is another, the act of March 3, 1815, and the act of May 31, 1830—we are getting a little later—which authorized the President—

to declare the repeal, as to any foreign nation, of the several acts imposing duties on the tonnage of ships and vessels, and on goods, wares, and merchandise, imported into the United States, when he should be "satisfied" that the discriminating duties of such foreign nations—

Now, here is the test quoted from the statute—

"so far as they operate to the disadvantage of the United States," had been abolished.

That is a little more definite, but fundamentally the test is what he thinks the effects of the foreign acts are on the advantage of the United States, and the court clearly indicates that it considers those early acts good. It sustains the act in the Union Bridge Co. case, saying if we do not sustain this Union Bridge act, then we would have to consider these earlier acts unconstitutional, and we will not do it.

Here is the case of *Field v. Clark*, on page 381, not quite as strong, but it has a broad element in it:

For the purpose of securing reciprocal trade with countries producing and exporting sugar, molasses, coffee, tea, and hides Congress itself determined that the provisions of the act of October 1, 1890, permitting the free introduction of such articles, should be suspended as to any country producing and exporting them that imposed exactions and duties on the agricultural and other products of the United States which the President deemed—that is, which he found to be—reciprocally unequal and unreasonable.

That part of the test is more definite than ours, but here ensues one equally indefinite—

For such time as he shall deem just.

The court held that good.

I do not want to go into a full citation, but let me call attention to one or two late cases.

Mr. MAPES. Did you give the date of that case?

Mr. ROOT. *Field v. Clark*.

Mr. MAPES. The Union Bridge case.

Mr. ROOT. The Union Bridge Co. case was in 1906. I have not given the facts of the Union Bridge Co. case yet, because I am not relying on that. That was a closer test than our own, and I am producing the book merely because it is such a fine compendium of the other authorities.

In the Intermountain Rate Cases (234 U. S., 476)—and this is not in the other book, so that if anyone is interested it may save time to have the citation—section 4 of the interstate commerce act is the act quoted. That act provided:

That upon application to the Interstate Commerce Commission such common carrier may, in special cases, after investigation, be authorized by the commission to charge less for longer than for shorter distances for the transportation of passengers or property; and the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section.

That is to say, they gave them discretionary power to suspend the long-and-short-haul provision, and the court held that that was good.

You will find in the Mutual Film Corporation case (236 U. S., 230) another instance of that sort. A board of censors was created by the Ohio law and given complete discretion as to what moving picture films should be allowed to be exhibited and what should not, and the point of delegation was discussed, and the court held that that discretion was valid under the Constitution.

I will not stop to read the citations, but if you are interested (220 U. S., 507) in the case of *United States v. Grimaud* you will find, under the forestry acts, a very wide delegation of power, with a test broader than in this case.

Mr. SANDERS. They delegated power there to fix the penalty, I believe.

Mr. ROOT. Yes; I believe so.

Mr. JOHNSON. Did you cite *Field v. Clarke* as substantially sustaining your position?

Mr. ROOT. No, sir; I am not citing it as sustaining my position on this delegation point, because, while it clearly indicates by way of dictum that these cases less strong than our own are good, yet *Field* against *Clark* has, I think, a more definite test than we have in this bill, and I cite it for the convenience of the committee because it contains a history of the development of the law in such good form.

Let me end by calling attention to a very interesting case of delegation in the selective-draft cases, a very recent case (245 U. S., 356). There may be some explanation of this, but it seems to me like the last word in the delegation of legislative power.

Section 1 of the draft act reads as follows:

The President is further authorized, in his discretion and at such time as he may determine, to raise and begin the training of an additional force of 500,000 men, organized, officered, and equipped as provided for the force first mentioned in the preceding paragraph of this section.

That is to say, they left it to his judgment when he should put that law into effect.

One other thing, in reading the argument in those cases you will find that one of the things which influences the court as to whether the delegation is proper or not is the question of whether it would have been practicable and sensible to try to lay down a more definite standard. On that let me read from the debate in the Senate, not because it has the authority of a court decision but because it is interesting to see the conclusions that they came to:

Mr. KING. Mr. President, I feel a great deal of timidity in making any suggestion to the chairman of the committee, who has given much consideration to this proposed legislation. I do suggest to him, however, that section 2—

That is the section containing the standard—

as I view it, confers unlimited and arbitrary power upon the President of the United States. I know the Senator will say, and all of us will say, that the President, of course, will not act capriciously or arbitrarily, but will seek to do justice in dealing with this important question.

I do suggest to the Senator that it would have been better to prescribe by legislation the terms under which licenses might be obtained and the conditions or contingencies which might lead to forfeiture. As it is now, no corporation knows what must be complied with in order to obtain a license. The rule or regulation prescribed to-day may be departed from to-morrow. The President may announce one policy to-day and to-morrow that policy may be abandoned and an entirely different one prescribed. One administration may suggest one policy and the succeeding administration may prescribe an entirely different one.

Those who are seeking these licenses and these privileges are utterly at sea. They are at the mercy of the Executive, and we all know that the Executive, in the multitude of duties resting upon him, can not bring to bear his personal attention in the consideration of all these matters, and he will be dependent upon some subordinate of the Government. So, after all, we come down to the proposition that some subordinate of the Government holds in his hands the privilege to grant licenses to those who may seek to land cables upon our shores, and holds in his powerful grasp the power to terminate those licenses according to his good will and pleasure. It is too great a power, it seems to me, to confer upon the President, knowing, as we do, that the action must be taken by some subordinate.

Then Mr. Kellogg answered:

Mr. KELLOGG. Mr. President, that suggestion was very carefully considered by our committee, and I tried for a long time to see whether I could draw general regulations which could be automatically complied with, and if the Senator from Utah can do it, he can do better than I can.

I asked the cable companies, through their able lawyers, to suggest to me conditions which could be put in the law with which they could comply automatically, and they said they varied so greatly that they could not do it—and they never did suggest any.

Let me give the Senator an illustration: The first thing that occurred to the committee was that we should make a general rule that no cable should land in the United States which connected with a cable having a monopoly in a foreign country. It immediately was seen in some cases that it not only would operate against American interests, but would be impossible to comply with it at all, because the monopoly to the foreign company was neither under the control of the American company nor the American Government, and we found in several cases where it was necessary either to grant such landing

licenses or deprive ourselves of cable facilities. There are many other conditions, and I do not believe it is possible to lay down general rules which can be automatically complied with.

And then Mr. Cummins arises and says that he has also tried and can not form any regulations. It was not because they did not want regulations, but because an honest effort showed they could not draw them. That is in the Congressional Record of April 26, 1921, at page 609, if the committee is interested.

This same objection has been urged in the Supreme Court of the United States. The court dealt with it in the case of *Monongahela Bridge Co. v. The United States*, one of those criminal cases arising under the river and harbor law where power was delegated to the Secretary of War. The court said—

Mr. SANDERS (interposing). What is the citation, please?

Mr. ROOT. Two hundred and sixteenth United States, 177, and you will find the passage which I am about to read at page 195:

Learned counsel for the defendant suggests some extreme cases, showing how reckless and arbitrary might be the action of executive officers proceeding under an act of Congress—

Just the thing that has been suggested here—

the enforcement of which affects the enjoyment or value of private property. It will be time enough to deal with such cases as and when they arise. Suffice it to say that the courts have rarely, if ever, felt themselves so restrained by technical rules that they could not find some remedy, consistent with the law, for acts, whether done by Government or individual persons, that violated natural justice or were hostile to the fundamental principles devised for the protection of the essential rights of property.

In short, if you can not draw regulations, you can adopt a very broad standard, according to which the delegated power is to be exercised, and the Supreme Court is confident that it will find means of giving relief, if there is substantial abuse in the exercise of that power; and also, gentlemen, it should be remarked that this power is granted subject to future action by Congress, and if it be found that the Executive abuses the power vested in him then the Congress can remove the power from the President and his Secretary of State and invest it in persons better fitted to administer it justly, if such persons can be found, which I doubt.

Let me pass now—

Mr. SANDERS (interposing). Before you pass from that question, would it interfere with your train of thought if I asked a few questions?

Mr. ROOT. Not at all.

Mr. SANDERS. The statutes cited in the case from which you quoted so freely were not really drawn into question in that decision, and all the court did was to indicate the different statutes for a period of years, which would indicate that Congress thought it had that power.

Mr. ROOT. Yes.

Mr. SANDERS. Of course, any long line of statutes following one course is persuasive in itself, because Congress is bound by the Constitution the same as the courts, but so far as the decision itself is concerned, it relates only to the particular statute which gives some definite standard.

Mr. ROOT. Yes, sir; it is simply dictum as to those statutes, but the court clearly indicates in the opinion that they are good and that

comes up in this way: The court ends up by saying that if the Union Bridge Co. statute is to be held bad then these laws which it recited "must be regarded as unwarranted by the Constitution." It is citing them as an argument and that it would not do that if it thought they were bad.

Mr. SANDERS. Of course, when a particular statute is not in question in a case, the court does not get the same light on it.

Mr. ROOT. I realize that. That is quite true.

Mr. SANDERS. It occurred to me last night, Mr. Root, in thinking over this question, that we had some statute of this sort with reference to the embargo on arms to Mexico.

Mr. ROOT. I did not find that, sir.

Mr. SANDERS. I never saw the statute but I remember some political discussion about the Executive permitting arms to be shipped into Mexico and then excluding them, and so on, and it occurred to me that that statute might be in point.

Mr. ROOT. It is typically the kind of statute that is likely to give rise to a point like that.

Mr. SANDERS. Of course, you realize that since section 2 puts all these cases in the alternative, using the word "or," that each particular one must be subjected to the test.

Mr. ROOT. I realize that.

Mr. SANDERS. So, that after all, while the different alternatives may give wider range than the original Senate bill, since the section contains this phrase, "or in maintaining the rights or interests of the United States," that puts it almost in the category of the original Senate bill, the only difference being that it adds "rights" to "interests."

Mr. ROOT. It seems to me it is still more definite because the original one is all-inclusive, the interests of the United States. That is like the older statutes or like the draft act.

Mr. SANDERS. Yes; that is true. If the Constitution had granted this power to the President, it would be absolutely an arbitrary power?

Mr. ROOT. Yes.

Mr. SANDERS. Since the Constitution gives the power to us, it might be that it would limit the power we could give to the President; that is, if we suddenly find ourselves in this situation, where the President has for many years acted upon the theory that he had an executive authority and, on a close examination of the matter, that the authority is in Congress, it does not necessarily follow that we can, by act of legislation, put it where we thought it was?

Mr. ROOT. I realize that that does not necessarily follow.

Let me pass now to the next point. I think Mr. Huddleston asked the question day before yesterday as to whether the bill might not involve an unconstitutional taking of property without compensation.

Mr. HUDDLESTON. And without due process.

Mr. ROOT. And without due process.

Mr. BURROUGHS. Before you take that up, Mr. Root, may I ask just a brief question?

Mr. ROOT. Yes, sir.

Mr. BURROUGHS. Do I understand you take the position that this discretion granted to the President in section 2 is a legal discretion?

Mr. ROOT. Yes, sir.

Mr. BURROUGHS. And that it is reviewable?

Mr. ROOT. Oh, no; except in the case of an abuse of discretion.

Mr. BURROUGHS. But in case there is an abuse——

Mr. ROOT. Oh, yes.

Mr. BURROUGHS (continuing). The courts can review it?

Mr. ROOT. Yes, sir; that is what I read last in the Monongahela case.

There are two legal safeguards: In the first place, if the President abuses his power and acts in bad faith, the court will review it; and the second is that Congress can at any time withdraw the power.

The CHAIRMAN. Mr. Huddleston, did you want to ask a question?

Mr. HUDDLESTON. Mr. Root, perhaps, wanted to express himself on the subject, and I would be very glad to hear him.

Mr. ROOT. On this matter of confiscation without due process?

Mr. HUDDLESTON. Yes.

Mr. ROOT. Yes; that is what I was about to speak of.

I want to produce on this, again, the same Union Bridge Co. case as a starting point. On this question the Union Bridge Co. case is an authority in point.

The river and harbor act purported to vest in the Executive the right to compel the removal of any structures over the navigable waters which impeded navigation. Acting under the apparent authority of that act, the Secretary of War ordered the Union Bridge Co. to make substantial modifications in a large railroad bridge. Those structural bridges are organic wholes, and if you change them you rebuild them, and the company refused to make the modifications and was indicted under the penal section of the act.

The court first dealt with the matter of delegation, and then it came, on page 388, to the consideration of the question which you put yesterday, and said:

The next principal contention of the bridge company is that the act of 1899 is unconstitutional, in that it makes no provision, and the United States has not offered, to compensate it for the sum that will necessarily be expended in order to make the alterations or changes required by the order of the Secretary of War. In other words, the defendant insists that what the United States requires to be done in respect of defendant's bridge is a taking of private property for public use, which the Government is forbidden by the Constitution to do without making just compensation to, or without making provision to justly compensate, the owner.

They raised precisely the question which was put yesterday. Skimming through the pages of this case, we find a number of interesting cases leading up to the principal decision. There was the case of *Gibson v. United States*, which you will find on page 389, where a property owner sued to recover from the United States damages because structures built to improve river navigation back-flowed water onto his lands, and the court said he had no rights; that the damage which he suffered was incidental to the exercise of a governmental power; that it was different from a case where the Government entered on their land and enjoyed it; that there was damage but not injuria.

You will find on page 390 a case where the building of a submarine tunnel cut off a man's access to his dock, and they held that the building of the tunnel was the exercise of a governmental power,

and that he had no remedy because the Government did not actually occupy and use his property.

You will find on page 394 another Supreme Court case cited where the building of a drainage system in the city necessitated the breaking up of the gas pipes of the plaintiff, and it was held there that although the gas pipes were destroyed and displaced, the fact that they were not taken and used by the Government made it unnecessary for the Government to make compensation.

You will find on page 395 a case cited in which the Government required the span of a masonry bridge to be increased; that is to say, the bridge rebuilt, in order to facilitate the passage of a drainage stream underneath the bridge, and in that case they held—

Mr. HUDDLESTON. Do you make a distinction, Mr. Root, between taking property and being deprived of property?

Mr. Root. Yes, sir; if the Government took a piece of cable from the Western Union and used it, they would have to compensate them for it. If an act, in the exercise of governmental power, makes that cable less valuable or makes it necessary to take it up or makes it impossible of use, then there is no compensation.

Mr. HUDDLESTON. I would like for you to dwell a little further on the distinction between the Government taking the property for its own use and merely depriving the owner of the use of his own property. As I recall the clause in the Constitution, it prohibits the depriving of any person of property—not the taking of property, but that no person shall be deprived of his property or liberty without due process.

Mr. Root. Yes, sir; that is the language.

Mr. HUDDLESTON. It would seem rather strange to say that to deprive a man of his property the Government must appropriate it to its own uses?

Mr. Root. Let me put a more recent case to illustrate the point I mean. You take a man who has a brewery; if the Government takes that building and uses it as an arsenal or court, it has to pay for it.

Mr. HUDDLESTON. Let me say this, the same guaranty applies to life as to property?

Mr. Root. Yes, sir; and to liberty.

Mr. HUDDLESTON. "Deprived of life, liberty, or property, with out due process of law"?

Mr. Root. Yes, sir.

Mr. HUDDLESTON. The Government does not take a man's life for its own use?

Mr. Root. Oh, I realize that.

Mr. HUDDLESTON. Or his liberty?

Mr. Root. No. I think the confusion, perhaps, has arisen in my taking two points together. I think you are quite right. There is the element of deprivation of property under the fourteenth amendment and there is the element of taking property for public use without compensation.

Mr. HUDDLESTON. It seems that is the confusion.

Mr. Root. I think I stand corrected. They are both involved in the case which I cited.

Mr. HUDDLESTON. The compensation applies to the taking of property, but the due process applies to the "depriving" of property; perhaps that is the distinction.

Mr. ROOT. This case would fall into the class of what you call deprivation of property, a case where the Government did not take it, but rendered it less valuable for the man who owned it.

Mr. GRAHAM. Permit me to cite an instance that comes within my own personal knowledge. For instance, this is a local matter, but the same rule applies, I assume. In my home it was desired to build a new jail. The county began condemnation proceedings and took the property for the purposes of a jail. Of course, the location of a jail at that particular place was an indirect damage to all surrounding property, decreased it in value and made it less desirable for residential purposes. The county was obliged to pay for the site, but it was held that the incidental damage on account of the location of the jail at that place was an injury without damage. That applies in this case, I assume?

Mr. ROOT. That is precisely the same question.

Mr. HUDDLESTON. Was that damage without injury—

Mr. GRAHAM (interposing). Damage without injury because of the public use; not similar to a railroad company, but a right inherent in the Government having the sovereign power.

Mr. HUDDLESTON. This section 5 is a limitation on the sovereign right—a limitation upon the Government's sovereign right to take property?

Mr. ROOT. That is true.

Mr. HUDDLESTON. A limitation on the right of eminent domain?

Mr. ROOT. That is true; yes, sir.

Permit me to proceed from the holdings to the statement of reasons. You will find on page 400 a statement of the underlying reasons which the court gives.

Although the bridge—

Please note how close this is to the contention which the Western Union Telegraph Co. makes here.

Although the bridge, when erected under the authority of a Pennsylvania charter, may have been a lawful structure, and although it may not have been an unreasonable obstruction to commerce and navigation as then carried on, it must be taken, under the cases cited, and upon principle, not only that the company when exerting the power conferred upon it by the State, did so with knowledge of the paramount authority of Congress to regulate commerce among the States, but that it erected the bridge subject to the possibility that Congress might, at some future time, when the public interest demanded, exert its power by appropriate legislation to protect navigation against unreasonable obstructions.

Mr. HUDDLESTON. Permit me to interrupt you, Mr. Root?

Mr. ROOT. Certainly, sir.

Mr. HUDDLESTON. My pier illustration of a riparian owner building a pier was not a happy one; that is quite obvious. I am able to see the distinction in a case in which a man may exercise a certain activity up until the time when the Federal Government has assumed jurisdiction to prohibit that activity. But let us take a case in which there was a valid grant by Congress of the right—we will take a concrete case—to land a cable and that right is exercised by

the cable company, may that right be taken away without due process of law and without compensation?

Mr. ROOT. An express grant?

Mr. HUDDLESTON. Yes, sir.

Mr. ROOT. Without any reservation of the power to alter, amend, or repeal?

Mr. HUDDLESTON. Yes.

Mr. ROOT. No. That is another case.

Mr. HUDDLESTON. I was going to refer to that. If this act is properly construed as authorizing the laying of a cable, once that right is exercised under it, it can not be taken away except by due process and compensation.

Mr. ROOT. Let me address myself to that a moment. It was assumed in the argument in the Supreme Court and in the lower courts that under the Eighteen hundred and sixty-sixth Statute, relating to communications between Florida and Cuba, the statute which granted a specific franchise, that if that statute had not been subject to the power to alter, amend, or repeal, rights under it could not have been taken away, but nobody has contended that such general permission as may be contained in the post roads act constituted the grant of a franchise.

Mr. HUDDLESTON. If the right was given by implication it would be as effectual.

Mr. ROOT. You can have simply two classes of rights. You can have a franchise and you can have a mere permission, a revocable privilege. I do not think anybody seriously contends that the post roads act—

Mr. HUDDLESTON (interposing). You hold that all rights which may be granted, if any, by the post roads act, may be taken away without compensation and without process?

Mr. ROOT. If, sir, the taking away results from the exercise of what they describe as governmental power.

Mr. HUDDLESTON. Let me suggest that it has a very important bearing on this particular case. If the Western Union Telegraph Co. has a right to land this cable there and we delay the passage of this act until they do land, and if the post roads act does require, after the exercise of the privilege, due process and compensation, then this act will be unconstitutional. Therefore, there is a reason for considering that point right now in deciding whether we will pass this bill through and make it a law, or let the cable land, as Mr. Carlton desires, and then deal with the situation as an accomplished fact.

Mr. ROOT. I realize, sir, that that is an important question, and if that were true, that if they could claim a valid and inalienable franchise under the landing—

Mr. HUDDLESTON. Not a franchise?

Mr. ROOT. Or a right which could not be upset by a subsequent act of Congress, it would be a most serious argument in favor of haste. I am not prepared to advocate that, because my own view is that while we will have long litigation about the creation of an inalienable right, if they get in now, which would be expensive to the Government, I do not think that they will make good in court. But I see the question. If there is any doubt about it, then it is a strong argument in favor of haste.

Mr. HUDDLESTON. If that view be the correct one, they might claim that the Government should not only pay for the cable station but the entire cable.

Mr. ROOT. It may be so.

Mr. HAWES. Mr. Root, if the Western Union Telegraph Co. lands this cable as a result of the Supreme Court decision and the power is afterwards vested by this law in the hands of the President and the Secretary of State, could not the Secretary of State or the President revoke the license or place restrictions upon the cable after it is landed?

Mr. ROOT. If Mr. Huddleston's point—

Mr. HAWES (interposing). I am getting away from his point.

Mr. ROOT. I think, as I understand the question, that it depends upon the answer given to Mr. Huddleston's question. If it be true the court would hold that a cable once landed under the post roads act, for instance, by the Western Union could not be taken away by subsequent legislation without compensation, then the President could not revoke the permission without compensation.

Mr. HAWES. I do not understand that that point is before us.

Mr. ROOT. No; I do not think that point was made.

Mr. HAWES. I do not think that is involved in the litigation. The question before the court, as I understand it, is simply whether the President has the right to refuse to license.

Mr. ROOT. Yes, sir.

Mr. HAWES. That is the only point. If Congress follows that up by giving him that undisputed right, can not he afterwards exercise it by withdrawing the license from the Western Union Telegraph Co. or put the Western Union Telegraph Co. under regulations even after it has landed?

Mr. ROOT. He can, unless Mr. Huddleston's point is well taken; but if Mr. Huddleston's point is well taken, then he would have trouble, I think.

Mr. HUDDLESTON. I direct your attention again to amendment No. 10 to the Constitution—the prohibition is that no person “shall be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation.” One is a question of compensation and the other is a question of due process. There is a distinction between the two. I am wondering whether you consider that a case of due process as well as deprivation?

Mr. ROOT. I consider this a typical case of due process and deprivation.

Mr. HUDDLESTON. I did not understand that the opinion you read referred to that question at all.

Mr. ROOT. I did not mean to produce those as authorities on the taking of property, but there is no question as to whether the United States is going to take this cable and use it. It is similar to the case of the breaking of sewer pipes—simply deterioration.

Mr. HUDDLESTON. To make this perfectly clear, do you hold that the Federal Government may destroy private property without due process?

Mr. ROOT. As a general proposition?

Mr. HUDDLESTON. Yes, sir.

Mr. ROOT. No, sir.

Mr. HUDDLESTON. As a specific illustration, you spoke of sewer pipe. May the Government uproot a man's sewer pipes and deprive him of them without due process?

Mr. ROOT. On the man's own private property, on his own lot, no sir; but if they are laid under the streets by virtue of a franchise or in any other way and the city has to put in a drainage system, then the city can make the man change the course of his gas pipe and not pay.

Mr. HUDDLESTON. It is not a question of compensation, but it is a question of process?

Mr. ROOT. Yes, sir.

Mr. HUDDLESTON. May the Government destroy my property without notice to me when I am in lawful possession and have a right to have it where it is?

Mr. ROOT. If it is performing a governmental act. It can build a dam on the river which back flows your shore front without telling you that it is going to build the dam. That is valid. It can do more than that in the exercise of a governmental control of any business which is properly the subject of regulation; it can put a man out of business without that not being unconstitutional.

Let me read you from *Ex rel. Lieberman*—that was a case coming up from New York State. Section 66 of the Sanitary Code provides that no milk shall be received, held, kept, etc., either for sale, etc., without a permit in writing from the board of health. There was no standard laid down.

The court said:

These cases leave in no doubt the proposition that the conferring of discretionary power upon administrative boards to grant or withhold permission to carry on a trade or business which is the proper subject of regulation—

That is the limitation—

within the police power of the State is not violative of rights as secured by the fourteenth amendment.

That same thing would be true of things under the fifth amendment; the same point.

They can not, generally speaking, deprive you of property; but if the act which they do is done in the performance of a governmental function and occasions injury to a business which is properly the subject of regulation, like cables or navigation, or incidentally depreciates the value of your property, it is perfectly valid. It is a hard rule, but it is the law.

Let me say one other thing: In the *Union Bridge Company* case the court said when you build bridges you build them subject to the possibility that Congress would in the future legislate on the subject, which might make a change necessary. In this case the *Western Union Telegraph Co.* laid its cable not subject to the bare possibility of future action, but they laid the cable after legislation was pending in Congress. The Senate bill was introduced on the 28th of April, 1920. The cable was not completed until July, 1920, and it was not laid until August, 1920. So they had not a possibility there, but they had actual pending legislation which they were going to head off.

That brings me to another point.

Mr. HAWES. May I interrupt you a moment to ask a question, Mr. Root?

Mr. Root. Certainly.

Mr. HAWES. The cases which you have been discussing are what you might call the domestic laws and regulations. Does not the question of cable connections with foreign nations introduce another element into consideration?

Mr. Root. I think it well may.

Mr. HAWES. And an entirely different principle, dealing with foreign nations. It is placing in the hands of the Executive a power which he may use in time of war?

Mr. Root. Yes, sir.

Mr. HAWES. And placing in him a power of trade during time of peace. It does not seem to me it is on all fours with these domestic decisions, that it is a bigger and broader general principle than involved in any of those cases.

Mr. Root. That is a stronger case as to the fundamental reason why the business is subject to regulation. You will find, sir, in *Field v. Clark* a statement by the Supreme Court that when you are dealing with foreign nations you can go a long way in the matter of Government control and also of delegation. I did not produce the quotation. On page 691 they discussed this point:

While some of those precedents are stronger than others, in their application to the case before us, they all show that, in the judgment of the legislative branch of the Government, it is often desirable, if not essential, for the protection of the interests of our people, against the unfriendly or discriminating regulations established by foreign Governments, in the interests of their people, to invest the President with large discretion in matters arising out of the execution of statutes relating to trade and commerce with other nations.

I think that point of yours bears rather on delegation than on the due process.

Mr. RAYBURN. That would not affect in any way compensation or vested rights?

Mr. Root. It is rather on the delegation point than on the other.

Mr. HOCH. In this particular case, I understand, your contention is that if the President in the exercise of the power granted under this bill or otherwise should refuse a landing to the Western Union Telegraph Co.'s cable that might be held to be depriving them of property, but that there would be due process if there had been a proper hearing?

Mr. Root. I think the court would say this: "In the constitutional sense, there has been no deprivation of property"; it would not say, "There was a deprivation with due process." As I remember the words, "In the constitutional sense there has been no deprivation of property."

Mr. HOCH. I thought you were drawing a broad distinction between deprivation of property with due process and taking of property in the constitutional sense. Do you go so far as to say that in the case involved here there would be no deprivation of property?

Mr. Root. Yes, sir.

Mr. HOCH. Even if it should be held deprivation of property, would there be due process? If so, might it not be held to be depri-

vation of property and still there be no legal necessity of compensation for the property?

Mr. ROOT. That might be true. I do not think that question would come up. I think the court would say that in the constitutional sense there has been no deprivation.

Mr. HOCH. Certainly, no taking of the property requiring compensation?

Mr. ROOT. In the case of a back flowage on land they do not give the owner any notice or hearing; they go ahead and build the dam. I think the courts would say that there has been no deprivation.

Mr. HOCH. I confess I can not see the distinction between deprivation of property and the taking of property if the terms are to be construed as you give it. Take the case where an order is entered requiring them to rebuild a bridge, obviously that is not taking property?

Mr. ROOT. That is obvious.

Mr. HOCH. And if it is not deprivation of property, as you contend, that would be a case where there was no taking and no deprivation under the constitutional clause.

Mr. ROOT. To take a very simple case, let us suppose that a law authorizes the public officers, not in pursuit of a public use, not in the exercise of the control of navigation or the defense of the country in war or anything like that, to destroy property—do not occupy it, but destroy it. There you have deprivation without a taking; but if it is incidental to the acts of armies in war or the safeguarding of navigation, then it is not a deprivation.

Mr. HOCH. But in the case you have given there still would have to be compensation. There certainly would have to be compensation if they took it without any color of authority.

Mr. ROOT. No. If they burn it, under such a law, we will say, it would be a wrongful and unconstitutional act and somebody would be punished for it.

Mr. WEBSTER. What about the case of a fire department destroying a building to prevent the spread of fire?

Mr. ROOT. I think, sir, they would say not that it is due process, but that in a constitutional sense there is no deprivation.

Mr. WEBSTER. That was my thought.

Mr. ROOT. That is what I think.

The CHAIRMAN. Mr. Root, setting aside the thought of interruption, how much time do you think you will need from now on?

Mr. ROOT. I think I can be through, sir, in 15 minutes.

The CHAIRMAN. The Chair would like to ask if there is anybody else in the room who wishes to speak in favor of the bill? [After a pause.] There appears to be no one. Then, so far as we know, the representatives of the Western Union are the only ones who care to say anything in rebuttal. The time is getting short and the committee is very desirous that there shall be nothing that suggests a dilatory method of procedure here, and we would like to have the hearings concluded at the morning session, and if all those who have taken part in committee and outside will kindly bear that in mind, it will probably be helpful in bringing about that termination.

Mr. JOHNSON. Mr. Chairman, I have not been able to attend all the hearings. I would like to hear the gentleman discuss the necessity for hurrying this legislation. I am satisfied on the other points.

Mr. ROOT. Will you be satisfied if I say that in the orderly process of my argument I will come to that after the point I am about to make now?

Mr. JOHNSON. Yes; I am in no particular hurry, but you said you were going to conclude in 15 minutes, and I wanted to hear you on that point before concluding.

The CHAIRMAN. For the purpose of reasonably expediting the hearing, the chair would like to ask the committee to refrain from questions until Mr. Root has completed his statement.

Mr. ROOT. Let me proceed now to another objection to the bill. It has not been discussed by the committee, but it has been urged with great vigor by the Western Union in argument before the Senate, and it has been placed before the people of the United States through the press by the Western Union and spread broadcast in their last annual report.

The objection is that aside from the technical questions in regard to the taking of property without due process or the deprivation of property or the delegation of legislative power, waiving those aside and granting for the argument that the Government has the power to legislate into the hands of the President the right to stop that cable, that there is injustice involved because the Western Union had committed its capital and committed itself to the enterprise before it realized there was any danger of its being stopped.

The Western Union chooses to put that issue somewhat in this form: "We did not know that we were going to be stopped until we had our cable all ready to be laid and could not go back."

That, gentlemen, is not the question. The question is whether before they had committed themselves they had such notice as should have made a reasonable man "hold his horses" and refrain from committing himself until he got his license. They were not entitled to have their case decided right away in view of the question of the Government's power, but they were entitled, if the Government realized that there was danger of their going ahead, to have such notice from the Government as would have made a reasonable man avoid committing himself in innocence.

Now, let us see what the fact is on that, because they cry out loudly that they never got such notice and that they have been injured and oppressed through the lack of it.

Let us bear in mind, first, the date as of which they committed themselves. Their cable was completed and shipped in July, 1920. The laying of the cable began on August 6, 1920. That was the beginning. Until the shipment of that cable, it continued to be an article readily salable in a market which was starved for cable, where companies were standing in line and contracting months and years ahead to get their requirements of cable. So that the date of shipment is the earliest date as of which they began to suffer a real loss, and the date of laying is the date as of which that cable really ceased to be an article disposable readily in commerce.

It was in July at the earliest that they were committed. On March 25, 1920, Mr. Polk, then Undersecretary of State, wrote to the Western Union a letter which you will find in full on the two hundred and

thirty-fifth page of the Senate record. I will not read it all, for lack of time, but let me read you the latter part. He was talking about the procurement of a license by the Western Union to land its cable.

Mr. RAYBURN. The date, please.

Mr. ROOT. March 25, 1920. The letter says:

Mr. Ames was advised that this procedure—

That is, the procedure of making the application for a permit through the Secretary of War first—

that this procedure was entirely satisfactory so long as it was understood that no cable should be landed until a permit had been granted by the President of the United States and the conditions thereof accepted by the Western Union Telegraph Co.

I do not wish, however, to be understood as committing the Government to the issuance of a permit in this case, as that can only be determined after full consideration of the case.

That was the first warning. That should put them on notice that there was a question. Then, if that was not enough to put them on notice, they sent a Mr. Taff, as agent for the Western Union, down to the office of the Solicitor of the State Department, and he conferred there with a deputy solicitor of the Department of State, Mr. Vallance. You will find on the two hundred and fifty-seventh page of the Senate record a statement as to what occurred during that conversation. Let me read a little of it to you. Mr. Vallance says:

I informed Mr. Taff that two obstacles existed to the granting of a permit by the President in this case. The first and minor consideration was the request of the Navy Department that if any cable were permitted to be landed in this country under the circumstances it should be on condition that it connect up with Porto Rico, St. Thomas, and Haiti, so that official Government business with those places would receive quicker transmission and also their strategic value as outposts greatly increased.

The second consideration was the matter of the exclusive grant which the Western & Brazilian Telegraph Co., an English concern, with which the Western Union proposes to connect at Barbados, had in Brazil.

This objection was based upon the established policy of the department to refuse cable-landing licenses in this country when the country with which the cable connected refused to allow American cable concerns to land on its shores. The policy of the Government was stated by President Grant in his controversy with the French cable company—

And then he goes into the proceedings he had with him.

Mr. SANDERS. What was the date of that conversation?

Mr. ROOT. The date of that conversation was April 28, 1920. The first notice was in March and the second in April. That, sir, is not subject to dispute.

Mr. Taff was called before the Senate committee later by the Western Union, and this is his manner of meeting the statement that he had notice:

Knowing Mr. Vallance's position in the department as an underofficial, I did not regard the information that he gave me then, nor do I regard it now, as notice of any sort of the department's policy.

They were particular about how they got this notice; but I submit, again, that that clear statement was enough to give a reasonable man notice "to hold his horses" until he got his permit.

Then you will find on page 259 of the Senate record an account of a conference—

Let me go back a moment, first. The matter was then brought up before the Secretary of State for discussion. He did not sit as a court would sit or as you gentlemen are sitting and have the two parties confront each other. He adopted a more pacific manner of getting his facts. He had the complainant come down one day and he had the defendant come down another day. First we came down and told him our story and a little later on the Western Union came down and put to him the other side of the case. The Western Union had its hearing on the 1st of June, 1920. Mr. Vallance was present at that discussion and I give his version of it. There are other versions, because several department officials were there and they can tell you about it. I read Mr. Vallance's version only because it is available in the record:

There was a long discussion between the Secretary of State and Mr. Carlton—

I have heard those discussions many times and know about what it would contain—

regarding this cable landing, and Mr. Carlton was given an opportunity to present his arguments in full. The meeting lasted until approximately 2 o'clock—

It started at 11.15.

when the Secretary was obliged to leave for a Cabinet meeting, and the final statement of the Secretary of State was that he would be unable to recommend the granting of a permit to the President.

The Secretary of State is a diplomatist, and he does not say, "You can not have it; get out," but he says, "I will be unable to recommend to the President the granting of a permit," and that means, gentlemen, as clearly as anything can, "As far as the department before which the determination of this subject lies is concerned you will not get your permit until you modify your position."

That was on the 1st of June, 1920. The Western Union did not consider that adequate to put it on notice that it must not commit its capital, and went ahead, shipped its cable. The cable ship appeared off Miami, and was stopped. It did not come up from Barbados. It was stopped first and committed its cable to the water after the destroyer had forbidden it to lay the shore end. We have here, again, the locus penitentia.

There is one other thing that qualifies this whole situation. There is on the books and in the diplomatic records one great outstanding case of the stopping of the landing of an American cable line which was trying to come in as a cat's-paw for a foreign company. That was the United States and Haiti Telegraph Co., which finally got into the courts in 1896. I want, if I may, to call special attention to this. There was a French company which had a series of monopolies—a monopoly for communication between Brazil and the United States, not an interport one, but for a line up to the United States, a monopoly in Venezuela and monopolies in Haiti and Santo Domingo. That company planned to run a line from Haiti up to the United States. The records will show they tried that and were not able to get their line landed. That was back in the late eighties.

Then they waited a while till they thought they had discovered a way of circumventing the rule forbidding the landing of foreign monopolistic cables. They went to an American cable company, incorporated, I think, under the laws of the State of West Virginia, the United States and Haiti Telegraph and Cable Co., which had an American board of directors on which certain gentlemen high in power in the commercial cable company were directors, and they got that cable company to undertake to run a line for them from Santo Domingo up to the United States and get into the United States, just the way the Western Union is trying to get the British-Brazilian system into the United States to-day. The Western Union Co. did not like that. It came to the Government of the United States and called on the Government of the United States to exercise precisely those powers of regulation and control which it now denies the existence of, and the exercise of which it is now denouncing as an arbitrary and oppressive act.

That case was instituted by the Western Union. Mr. Taggart, who sits at this table, was their counsel. He knew all about it. He knew all about it when this Barbados cable was being manufactured in England and was about to be landed. This company, which is the foremost exponent, historically, of the doctrine that a foreign monopolistic system can not be landed here through an American cat's-paw, comes into court and asserts that in complete innocence of any likelihood of trouble as to landing their cable they committed their capital to this enterprise.

That is the most absurd contention I have ever heard made at the bar of justice. It makes me angry, because they have spread it broadcast to the people of the United States as a slander upon the administration of the State Department. I want to make this clear, because it is the backbone of their complaint. Suppose a man stakes out a claim on Government land and proposes to build a house on it before he gets his patent. He gets a letter from the Secretary of the Interior saying, "I want to make sure that you do not go ahead until you get your patent." That is like Mr. Polk's letter; and, further, "I do not want it to be understood that the Government commits itself to the issuance of a patent until there has been a complete investigation." Then let us suppose he sends his agent down to the Solicitor for the Department of the Interior, and the solicitor says, "There are objections to this," and specifies the objections. The agent goes back and the president of the company comes down and discusses the matter with the Secretary of the Interior himself, and the Secretary of the Interior says to him, "I can not recommend the granting of a patent," and then the man goes back and builds the house. And let us suppose also that there had been a great litigation over this question, in which the president of this company, or the counsel, rather, for this company, had contended that somebody else under like circumstances did not have the right to build without a patent. That man would get very little sympathy when he asserted he was wronged because he had built his buildings in ignorance of what might happen to him.

I now want to read this statement, beginning on page 23 of the Western Union Telegraph Co.'s annual report:

In the early spring of 1920 the Western Union applied for permission to lay a cable through the territorial waters off Miami, Fla., thence to Barbados.

there to be connected with a cable of the Western system, all in accordance with the routine previously followed. Never had a cable landing been denied an American company—

That is flatly and absolutely false—

and there was no reason for suspecting that there would be any hostility to this particular application or any unusual delay in granting it. No opposition was heard from the State Department to the Miami landing, the application being dealt with in an apparently friendly though leisurely spirit.

That is their description of the Secretary of State's statement that he could not recommend the granting of the license.

The cable was nearing completion when the Western Union communicated with the State Department and informed them that the cable, 1,630 miles in length, could not be stored when finished and that because of the paucity of cable ships capable of laying long lengths—there being two available in the world and both owned by British cable manufacturers—the program could not be changed after the ship was loaded. No word was received in answer to this. Early in August the cable ship reached the United States, reported at the customhouse at Newport News, and discharged the United States shore end or section subject to duty. The ship was now ready to begin laying the cable that had been so much needed and so earnestly urged by the business interests and public press of North and South America.

On the way to the starting point, outside the 3-mile limit, the ship, loaded with the means of better communication and fuller understanding, was met by a squadron of United States ships of war to prevent the laying of the cable, and this was the first definite assurance that the administration which had initiated the cable project was now opposed to it.

Let me now take a moment on the specific amendments that have been proposed.

First, it has been suggested by Mr. Taggart that the bill in the form in which it came down from the Senate does not place all cables on a parity. The operation of the first section of that bill is to require that every cable not now having a presidential license must get one; every cable already having a presidential license, so far as the bill is concerned, keeps it. Mr. Taggart thinks that because there may be a difference in the terms of the old presidential licenses and the new ones an injustice will result. I think we may rest assured that if the President is vested with power, he will see that the old licenses and the new licenses are brought into a just uniformity, so far as such uniformity is compatible with the different situations of the cables involved. There is no question that the effect of the bill as it stands makes it possible for the President to establish complete uniformity of treatment among cables.

Two classes of amendments have been suggested to the bill. One would exempt from the operation of the bill all cables laid under previous congressional authority. That is the amendment, according to which they are to insert in line 8 "or authority has been granted by Congress," and a like insertion in line 10. This would completely defeat the immediate purpose of the bill by taking it out of the power of the Executive to exercise any control over the present Barbados or Key West landings. It completely emasculates the bill for the purpose of dealing with the crisis in South America.

Mr. MAPES. I do not understand why, Mr. Root.

Mr. ROOT. For this reason: It makes the bill read as follows:

"Unless a written license to land such cable has been issued by the President of the United States, or authority has been granted by Congress," and they are claiming that under the special Cuba-to-

Florida act of 1866, or under the post-roads act, authority has been granted. That is what I mean.

Let me pass now to the longer suggested amendment. As you gentlemen have copies of the amendment, I will not read the text, but that amendment contains the following clause—

Mr. HAWES. Will you refer to the section, please?

Mr. ROOT. It is an amendment to be inserted in section 1, page 1, line 12.

*Provided further,* That cables heretofore laid under express authority of Congress or upon compliance with the then existing law may be operated without such license upon compliance with the law as it existed prior to the passage of this act—

and there is a similar provision as to cables about to be landed, a little further down, that they may be operated without a license on compliance with the law as it previously existed.

Mr. MERRITT. That is, they may be operated for 90 days.

Mr. ROOT. "Upon compliance with the law for a period of 90 days"; yes.

Now, suppose the decision of the Supreme Court, and this was suggested by the committee, is in favor of the Government, and it is determined that the law as it previously existed required a presidential license. Then you have a provision in the bill which has the following effect:

*Provided further,* That the cables heretofore laid under express authority of Congress or upon compliance with the then existing law requiring a license may be operated without such license upon compliance with the law as it existed prior to the passage of the act.

Textually, that becomes absurd and repugnant, but I think that any court to which it was submitted would make the statute have a meaning by saying that they can land without a license on compliance with the preexisting law, except in so far as it requires a license. They are bound to do that. It is the only workable interpretation of the statute, and that would have the effect of letting the Miami Line in and making it necessary for the Government to reopen the question, and if it thought they should not have come in, tear the cable up later.

Mr. JONES. If the Supreme Court should find in favor of the Government, then there is no existing law by which they could land.

Mr. ROOT. Yes; there is an existing law by which they could land.

Mr. JONES. If the Supreme Court should determine that the only way they could land is by a license from the President or under existing law—

Mr. ROOT (interposing). There is more than one requirement of the existing law. They have to go to the Secretary of War and get a permit under the navigation provisions of the river and harbor law.

The second objection I have to the amendment is that it shifts the burden. The provisions of the amendment provide that the company may operate after the 90-day period until the Government comes in and affirmatively takes the license away. That is a minor objection, but the burden ought to be on the company and ought not to be put on the Government.

The third objection is that irrespective of those first clauses the effect of the amendment is to completely defeat all those considera-

tions which now urge haste in the passage of the bill. It scrambles the eggs and leaves the Government to unscramble them after the situation has been committed, and that brings me to the last point I am going to take your time on, which is whether there is any real reason why the legislation should be expedited. Why should they not be allowed to come in and land their cables, operate them for 90 days, and then have the question raised and have their cable disconnected in case the Government finds it is injurious to the country.

I have a good deal of difficulty in arguing that as a theoretical proposition, because you can sit down and almost demonstrate that theoretically you can work out the same results at the end of 90 days that you can now, but as a practical matter it makes a very great difference.

In the first place, if they land that cable, whether Mr. Huddleston's point be sound in law or not, we will have a claim from the Western Union that the landing vested in them inalienable rights under the post roads act, a franchise, and we will litigate that thing for the next five years at a cost of goodness knows how many thousands of dollars and how much trouble on the part of the Government. Some day I think the Government would win, but it is a thing which it ought not to be subjected to, if it can be helped. We are gradually learning their powers of obstruction and delay and their powers of litigation, and if they have that opportunity for a moot constitutional point given to them, goodness knows when we will get rid of it. That is one thing.

The second thing is that if they once land their cable we will have the same kind of outcry about tearing it up as they have been scattering around the country about the hardship inflicted on them because they were stopped when they laid a cable from the 3-mile limit. We will have that multiplied and rendered doubly obnoxious. We will have to unscramble the eggs after they have been scrambled.

Then there is a third thing which is the most important of all. The Government is nearing the final act of a negotiation which has been going on for 50 years. It is on the point of success. I take it to be an axiom, both in diplomacy and in war and in commercial negotiation, that you must not allow your adversary to be encouraged and demoralized by temporary success.

There is a feeling growing in Brazil now, a feeling growing from the successful and persistent and solid attitude of the Government on that landing, but if you let them in for three months you completely undo the effect of what you have already done.

I can not prove that argument to you theoretically, but as a practical man of affairs I do not think you will deny that a slip backward means that you lose a large part of the value of what has been accomplished in negotiation, if you once go through the motion of letting them in—of letting the other fellow have his way. The men who have before them the practical problem of succeeding in these negotiations, the President, the ex-President, Mr. Lansing, Mr. Colby, the solicitors, Mr. Hughes, and also the Senate committee, all felt, as a practical matter, that it was highly important to have sustained success in this long-drawn-out difficulty and that there should not be a break in the continuity of the United States' policy. That is vital.

The final proof is that the Western Union Telegraph Co. itself opposes this bill, because they think the situation will be improved if they once get in. That is the reason why their cable ship has proceeded to Miami and now lies off the coast waiting to land the cable if a telegram comes down there from the court on Monday announcing a favorable decision.

Yesterday we produced fragmentary evidence as to the abuses by the British company, as to the economic effect of denying or granting landing, and as to a number of other facts. I do not assert that we have come here and conducted a complete trial, or produced satisfactory and complete evidence. That is impossible in the time available. You will hear denials of nearly everything which has been said. What I ask is this that there be an authority constituted which shall have power now to hear us and to decide whether the assertions which we make are true and to grant us a remedy in case we are entitled to it. We are not coming to this committee and saying that we are going to settle the merits of the controversy before you, but to outline it and ask that you empower the President to hear our case and to hear the case of the other side and on investigation determine what the best interests of the country demand to be done. We are asking you to pass a bill which will give us our day in court.

Mr. GRAHAM. May I interrupt you right there?

Mr. ROOT. Certainly, sir.

Mr. GRAHAM. Will you be good enough to give me the citation of the United States *v.* The Haitian Telegraph Company?

Mr. ROOT. You will find the case, I think, in 77 Federal, 495.

Mr. GRAHAM. Did it go to the United States Court of Appeals?

Mr. ROOT. No, sir. It went to the district court. The Government lost on its application for a preliminary injunction, but the company later surrendered and accepted the Government's conditions and the litigation was suspended. If you want to know the circumstances, I will submit to you the letters from the Attorney General and the Department of State which state the facts and circumstances relating to the discontinuance of the litigation.

Mr. GRAHAM. I do not care for that; I simply want to see the case.

Mr. NEWTON. Your position in reference to the amendment which you have just discussed is the same with reference to the second amendment proposed by Mr. Taggart as to section 1?

Mr. ROOT. Yes, sir. Let me say this, I do not like to suggest that the bill be amended, but it seems to me there is one amendment which might properly be made. I was much impressed with what was said at least about the subfluvial cables in the United States. I think it would be wise to insert at the beginning of line 4 in section 1 before the word "submarine" the words "high sea," which has a distinct technical meaning in international law—"high sea submarine cables."

Mr. JONES. Should not those words be placed throughout the bill?

Mr. ROOT. I think if you put those words in the first section it qualifies everything that follows.

Mr. JONES. I do not know whether you can answer the question which I desire to ask you or not, Mr. Root. This bill on its face in section 2 gives power to the President to withhold or revoke a license when certain things exist, that is, among others such as to

assist in securing rights for the landing or operation of cables in foreign countries. That in a general way, is the purpose to be accomplished by this act?

Mr. ROOT. Yes, sir.

Mr. JONES. Why has there been such delay in this legislation on the part of the Government, have they not been somewhat dilatory in getting the salutary effect upon foreign countries?

Mr. ROOT. I think so.

Mr. JONES. Why wait until this last moment?

Mr. ROOT. Because the wheels of legislation are hard to move.

Mr. JONES. They are just as hard to move now as before?

Mr. ROOT. Yes, sir. I think the original bill was introduced in the last Congress. It was hard to get hearings on it and the hearings dragged along. You remember there was a great congestion of business.

Mr. JONES. But I understand that for 50 years our Government has been trying to break up this monopoly in Brazil in one way or another.

Mr. ROOT. They have always assumed until this litigation with the Western Union Telegraph Co. that the Government had the power to act without a bill.

Mr. HOCH. Referring to the suggested amendment in line 8, would it cure your objection if there should be inserted the words "special act of Congress," so as to read, "or authority has been granted by a special act of Congress"?

Mr. ROOT. No, sir; because the Key West to Havana cable, which they plan to use as a substitute for the Miami line, was laid under a special act.

Mr. HOCH. Do I understand you to contend that if this cable were landed and the Supreme Court decision affirmed the lower court, then it would be contended that that was a cable landed under authority of Congress? If you insert the words "special act of Congress" that could not be done?

Mr. ROOT. Not as to the Miami cable. But when they were arrested at Miami they conceived a way of getting around the action of the Government by splicing into their Barbados line a branch cable and running that branch cable across to Cojimar, a little station on the coast of Cuba, and there connecting with their existing cables from Cojimar to Key West. Two of these latter cables were laid under the old special act of 1866 and which, I think, runs for 14 years.

Mr. DENISON. Do you consider, Mr. Root, section 2, which provides for the revocation of a license, as vital to the legislation?

Mr. ROOT. I do not think I quite caught that question, Mr. Denison.

Mr. DENISON. Section 2 grants to the President the absolute power not only to withhold the license to land a cable, but to revoke one already in existence and operation under certain circumstances?

Mr. ROOT. Yes, sir.

Mr. DENISON. Do you consider the part that provides for revoking a license as vital to this legislation?

Mr. ROOT. Yes, sir.

Mr. DENISON. You think that is just as important as the other part?

Mr. ROOT. I think so; I think it is essential to bring the old licenses into uniformity with the new ones.

Mr. DENISON. Do you think it will be a practical thing for the President to revoke a license of an operating cable under any circumstances?

Mr. ROOT. A practical thing?

Mr. DENISON. Yes, sir; without any provision of law for making compensation?

Mr. ROOT. Yes, sir; I think so. I think that is precisely a case of which the *Ex rel Lieberman* is the type, where you are running a milk business or an elevator business, they require you to get a permit. That is the *Monongahela Bridge* case.

Mr. DENISON. Do you think that the court would intervene and determine whether or not the President had a right to revoke it?

Mr. ROOT. I think that they would get relief in the courts under the rule of the *Monongahela* case if it could be shown that the officers of the Government were acting in an improper manner.

Mr. DENISON. This section will give the President the right to revoke the license of any cable company coming to the United States to operate if the President shall determine or decide that some other company, some other cable company, ought to be allowed to enter the country?

Mr. ROOT. Yes, sir.

Mr. DENISON. In other words, if hereafter the President under this power should decide that he wants the *Western Union Telegraph Co.* or some other company to enter Peru, the President, in order to get permission for some other company to enter Peru, could cancel your permit to continue to do business?

Mr. ROOT. He might exercise that power in an unjust and improper way. I can only say, again, as the Supreme Court said:

Learned counsel for the defendant suggest some extreme cases, showing how reckless and arbitrary might be the action of executive officers proceeding under an act of Congress, the enforcement of which affects the enjoyment or value of private property. It will be time enough to deal with such cases as and when they arise.

Mr. DENISON. That is all right to say there will be time in the future, but then it might bring on endless litigation.

Mr. ROOT. I realize that in all this wide delegation of legislative power it is impossible to make the delegation in such form that the legatee of the power can not be arbitrary and unjust and improper. That, I see no way of avoiding.

Mr. BURROUGHS. If that was to be done, would not one way be to require that before a license was revoked there should be a hearing?

Mr. ROOT. Yes, sir.

Mr. BURROUGHS. And the record should show all of the grounds upon which the license was revoked?

Mr. ROOT. I think that would be proper.

Mr. BURROUGHS. There is nothing in this bill that requires any hearing or any record to be made, and it might be difficult for any reviewing court to determine whether the power had been used in an arbitrary way or not?

Mr. ROOT. I think a provision for hearing would be proper.

In the interest of the simplicity of the legislation, let me suggest that it is always possible for Congress to step in and make modifications. You are not saying "Good-by," you are simply granting the

power. That is a far better safeguard than a complicated provision, and if they do revoke the license you can get it back the next day.

The CHAIRMAN. Mr. Taggart.

Mr. TAGGART. Mr. Carlton desires to proceed first.

The CHAIRMAN. Before Mr. Carlton begins I should like to say to the members of the committee that the order of business to-day is as follows, the proposition to send the tariff bill to conference, then the vote on the Tincher bill, and after that the vote on the conference report on the immigration bill.

We will permit Mr. Carlton to proceed.

Mr. Carlton, can you give us an idea as to the amount of time your side will want on the subject?

Mr. CARLTON. It depends on how much I am excited by questions. My ordinary statement ought to be fairly brief, because it deals only with a few practical questions that I thought should be cleared up.

The CHAIRMAN. I would then suggest that Mr. Carlton be allowed to finish his statement without interruption.

#### ADDITIONAL STATEMENT OF MR. NEWCOMB CARLTON.

Mr. CARLTON. I desire to assure the committee that, in respect to the contract which we made with the Western Co., we dealt for the Western Union Telegraph Co. alone, and never for the Western Co. The provisions which have been referred to that we thought were for the benefit of the All-America Co. were put in on our insistence. There is an atmosphere, however, that I think we are conscious of, that our friends, the All-America Co., are before you almost in the position of a little child, seeking the consolation, comfort, and protection of this committee. I have not heard anybody say what a large concern they were, and I thought you might be interested in it.

As you know, they have over 20,000 miles of cables, as much as the Western Union Co. has, and here in brief is a little history of their financial position.

Take, first, the Central & South American, which, you understand, is now a part of the All-America. Their average annual cash dividend paid in the last 10 years has been at the rate of 6½ per cent. Besides cash dividends a stock dividend of 25 per cent was paid in 1907, and another stock dividend of 26 per cent was paid in 1917.

The Mexican company came into the All-America, and the Mexican company's annual cash dividends paid during the last 10 years have been at the rate of 10 per cent. Besides these cash dividends a stock dividend of 50 per cent was paid in 1906, another stock dividend of 25 per cent was paid in 1909, and still another stock dividend of 39 per cent was paid in 1917.

The following figures combine the operations of both companies for 10 years ended 1920: Earnings before paying dividends, \$27,916,791; cash dividends paid, \$11,726,820; difference transferred to surplus, \$16,189,971.

For five years ended 1920: Earnings before paying dividends, \$17,685,277.

Now paid on outstanding stock, \$22,140,009, an increase over outstanding stock on December 31, 1910, of almost \$9,000,000, or 68 per cent. The surplus on December 31, 1920, was \$6,665,552, an increase

over surplus on December 31, 1910, of almost \$2,000,000, or 38 per cent.

Mr. HUDDLESTON. May I interrupt you a moment to ask a question?

Mr. CARLTON. Certainly.

Mr. HUDDLESTON. What is the capitalization of your company?

Mr. CARLTON. \$100,000,000.

Mr. HUDDLESTON. What is the value of its property?

Mr. CARLTON. I wish you could tell me. That is a matter which we have up with the Interstate Commerce Commission. They have been working on it two or three years, and the negotiations that we have with them before the value is determined are a matter of considerable concern to us.

Mr. HUDDLESTON. What is your estimate of the value?

Mr. CARLTON. Our book value, as I recall—please do not hold me too closely to these figures—is somewhere around \$170,000,000.

Mr. HUDDLESTON. You are a subsidiary of the American Telephone & Telegraph Co.?

Mr. CARLTON. Oh, no; we have nothing whatever to do with them.

Mr. HUDDLESTON. No relation?

Mr. CARLTON. None whatever. If you will remember, we were divorced by the Government in 1914.

Mr. HUDDLESTON. I had lost track of that.

Mr. CARLTON. We were completely divorced. There is no relation whatever.

I should like to have the committee appreciate that the position of the All-America Co. in Brazil is far from pathetic.

I want to call your attention to this map which we have hurriedly outlined. The points in red—Santos, Rio, and Sao Paulo—are the places now reached, as you remember, by the All-America. The points in red north of Rio are those reached by the Western Co. The principal thing of interest about this map, however, is the fact that here [indicating] are a lot of places which no one reaches with a coastal cable and which the All-America Co. is perfectly free to go to. Here [indicating] is a little place of 80,000, another of 30,000 [indicating], another of 24,000 [indicating]; here is one of 50,000 [indicating]; here is a 30,000 place [indicating]; and here is a 55,000 place [indicating], etc.

There must be some reason in the minds of the All-America for wanting this western concession set aside.

Mr. NEWTON. Are they connected with any telegraph companies?

Mr. CARLTON. That is the point. The cities at present not touched by cable are served only by the Brazilian national system, but anyone can go to them with a cable.

The real reason why the All-America Co. want the British concession set aside is because they want to secure the Brazilian coastal business for their revenue. It has nothing to do with the United States. They want to establish a system of coastal cables competing with the British company, a perfectly legitimate and proper enterprise, in order that they may increase their revenue by the Brazilian lines. That is all right. It only happens that we got there first. If, however, the All-America are genuinely anxious to develop Brazilian business, why do they not go to some of these other places that are open north of Rio on their way to the United States?

If you will consult the map you will see that what the All-America Co. plan to do, and they have secured a concession for that purpose, is to connect Rio by Fernando de Notoñha, this island [indicating] lying off the coast of Brazil, with their two cables at Guantanamo, Cuba. I say that they have secured a concession for that purpose, and as soon as this matter is settled and there is no longer any occasion to come before these committees and plead for protection they will lay that cable, because they are sensible people, and it will give them an alternate route. About 60 per cent of South American business originates in Buenos Aires. All of that business, and also that from Brazil, has to cross the Andes, a very stormy bit of country, where the All-America have more or less trouble with their land lines. Prudence and their growing business demand that they shall land a cable direct from Brazil to connect with Guantanamo. That they will do.

Mr. Root is right in what he has told you, we are going to be pretty severely punished before we get through this business, for he has said that nobody will give us any cable business because of the prejudice which exists against the British company. I will admit that there may be some prejudice, and if it is as strong as Mr. Root says it is, then I think I am in danger of losing my job, because I had my company go down to Brazil, and we are going to connect with an operating company to which, according to Mr. Root, nobody will give any United States business. I think we can judge of that. I do not think you need take it too seriously on your conscience that there is so much antipathy. We appreciate that they will not give us any business as long as the United States will not deal with us.

Now, that opens another interesting point.

The CHAIRMAN. Mr. Carlton, will you kindly suspend for a moment?

Mr. CARLTON. Certainly.

Mr. GRAHAM. Did you people have any interest in South America or the South American business at any time until you laid this cable from Barbados?

Mr. CARLTON. None whatever.

Mr. GRAHAM. So it is opening a new field entirely for you people?

Mr. CARLTON. Yes, sir.

The CHAIRMAN. You may continue.

Mr. CARLTON. Let me say a word about the question of employees in South America.

The CHAIRMAN. Mr. Carlton, if you will kindly suspend, the committee will now take a recess until 2.30 o'clock p. m.

(Thereupon the committee took a recess until 2.30 o'clock p. m.)

#### AFTER RECESS.

The committee met pursuant to recess at 2.30 o'clock p. m.

The CHAIRMAN. We will ask Mr. Carlton to proceed.

#### ADDITIONAL STATEMENT OF MR. NEWCOMB CARLTON—Resumed.

Mr. CARLTON. Mr. Chairman, when you recessed, I think I was speaking of the staff of the cable companies. Great Britain furnishes the larger part of the cable operators who work the so-called syphon recorders. That is because England is the headquarters of

the manufacture of syphon recorders and the headquarters of the cable craft of the world, which forces all of us to use much the same nationalities so far as employees are concerned. The All-America Co. use the same type of Britisher in their cable business as we use or as the Commercial Co. use.

The All-America Co. go a little further than that, to show there is no prejudice, and their vice president in charge of operations is himself a Britisher. Their chief engineer is a Britisher. I had the pleasure of talking the other day with their representatives in Galveston who control all of that great business that flows through their cables to the South, and I am sure from their accent that they are not French. They were clearly Britishers, and you will find Britishers all through their system, and very properly so, too.

There has been a suggestion that the Western Union Telegraph Co. had some umbilical connection with something British. The Western Union Telegraph Co. is one of the oldest public service companies in America. Of its 65,000 employees over 95 per cent are American. As far as I know, all of its stock is held by Americans, although there may be a few shares held otherwise here and there. All of its directors are Americans; all of its executives are Americans. The only British official that we have in our employment is the man who has charge of Atlantic cable traffic, and we have a vice president in London. Of course, we have employees down the line who are British and I hope we always will have. They are very satisfactory.

Is it conceivable that a company of the age and the reputation and with the stake that the Western Union has in this country—because all of our capital is invested in the United States, we have hardly a handful of capital invested outside of the United States, and all of our Atlantic cables belong to somebody else and are leased—is it conceivable that the Western Union with so much at stake in the United States and in its future prosperity would do anything that was inimical to American business and American progress? It is ridiculous. You must concede it is ridiculous.

The All-America people, in case you decide to pass a bill that will secure such rights as may flow from the Supreme Court, are not left high and dry. There is another company that reaches practically every point in the United States, where a message destined to South America could originate, and that is the Postal Telegraph Co., an excellent American telegraph system. The relations of the All-America with the Postal Co. are very friendly.

I went so far as to say to the All-America people—we were then perhaps a little more friendly than we are now—when they decided not to come into this three-party arrangement with the Western Co., “We are going in with the Western Co., as you understand. If I may venture to offer a little advice, make an association with the Postal Co. so that you will have a comprehensive collecting and distributing system in the United States.” That, I am told, is in process, and I am also told that a considerable portion of the large block of stock that was owned in England and sold in the United States has been purchased by those who are associated with and are friendly to the Postal Co. You will find, after we have landed our cable on the Miami beach and have begun to do business in South America, that the All-America Co. will come out with a very close association with

the Postal Co. for delivering and collecting their messages throughout the United States.

As has been testified before you, most of the business between South America and the United States is in New York City, where the All-America Co. have as many offices as they choose to open.

A very interesting speculation has been raised. Will the British company give up? Can you coerce them into giving up their position in Brazil? I am surprised that our friends, the All-America Co., did not come before you and say, "Gentlemen, to make an end of this, we are perfectly willing to forego all of our exclusive rights in South America if the British will forego theirs." That would have left the British with not a leg to stand on, and left us with only half a leg, but the All-America did not do that. They have said to you very clearly, "Force the British company out of their position in Brazil but leave us to the enjoyment of our monopoly."

My experience with the British, and I have had a considerable one, is that you have no chance whatever to coerce the British company into giving up their position in Brazil under these circumstances. Why should they? All they have got to do to complete their Canadian system is to lay 1,200 miles of cable between Barbados and Bermuda, and as I explained to you on the first day of the hearing, they have their direct Canadian system, which I think in the interest of the United States it is very desirable should not go through. You have no chance whatever. I have been over this subject with them and it is folly to think you can coerce the British into giving up their position in Brazil, unless there is some general showdown and all such monopolistic features in South America and Central America are done away with.

I am reluctant to come to the conclusion that the whole of Mr. Root's argument, the foundation and the superstructure of it, is anti-British. Suppose the Western Union Co. buys out the Western company in Brazil and takes over that property, with its rights and privileges, what becomes of Mr. Root's argument? Could he come before you and say, "Here is an American company enjoying a certain right in Brazil. We want you to put them out of it and leave us in undisputed possession of our monopolies on the west coast." No; he would never come before you with that proposition. He is far too skillful for that, but he comes before you under the plea that to permit anything that is British to connect through an American cable is inimical to the interests of the United States.

One more thing and I am done. It has been said here, and I want to put this in the record, that Mr. Colby made a certain statement to me when I saw him in August. That, I think, was the only time, with one exception, I saw him. He turned over his papers, anxious to get some glimpse of what the thing was all about, spent perhaps 15 or 20 minutes talking about it, because he was very busy and was called out of the room frequently, and his last words to me were these:

I will give this careful consideration. I have told you I did not know anything about it, and I will let you know.

He never said to me: "I can not recommend this landing license to the President."

The CHAIRMAN. Are there any questions to be asked Mr. Carlton? If not, Mr. Taggart, do you desire to make a statement?

## ADDITIONAL STATEMENT OF MR. RUSH TAGGART.

Mr. TAGGART. Just a few words. I will take up what little I have to say just where Mr. Root left off with his speech, in which he pleaded with great eloquence for an opportunity for his company to be heard, but which necessarily involved the peculiar contradiction that the very thing he was asking for his request denied to the Western Union, in effect; that is, the immediate determination of legislation which, according to the whole tenor of his speech, was designed to prevent the Western Union from getting what it claimed to be its rights under litigation, which is under consideration by a court of last resort. He did not seem to be conscious of the contradiction, but it seemed to be so obvious a one I could not help but comment upon it to this committee.

It is evident upon that phase of this situation that so far as the origin of this legislation is concerned it was not designed to be, as I stated in the opening of my remarks the other day, an attempt to have a scientific and careful legislative policy relating to the landing of submarine cables enacted into law, but was expressly designed to secure the prevention, if it were at all possible, of the landing of a particular cable. With respect to that, I simply want to say that I discussed the general policy of this bill a few days ago, and much may be said pro and con with respect to the legislative policy in its general application to all cables, and as has been made clear, so far as the Western Union Telegraph Co. is concerned, it does not seek to prevent any such legislative policy being enacted into law, but it is proper that I should comment upon the attempt in the enactment of a professed general legislative policy of an enactment designed, and really applicable only to one particular company and one particular cable, because if it be considered that this legislative body is being used in the exercise of its high functions of legislating respecting foreign commerce in the interest of one company, which has interests in South America, and to destroy absolutely and entirely for all time the possibility of another company standing on a perfect equality with it in every respect, so far as this country is concerned, from getting a foothold in South America, you have enacted a precedent into law which will not go very far in inducing investors to invest in that kind of property. It is not, as it seems to me, the kind of legislation or the kind of legislative policy that ought to be encouraged. So much for that feature of the situation.

In Mr. Root's argument there are some things which I wish to clear up, which I have been personally connected with. There was a reference to the question involved in the litigation now pending in the Supreme Court which indicated that the Western Union Telegraph Co., in making its contest under the act of 1866, was either the discoverer of a new right, or had taken a chance upon that question for the first time, and that it had never been presented before.

I happen to know something about the record of the Western Union in connection with that act under the very state of facts as presented here. In 1889, for the first time there was presented the question to me with respect to the application of the act of 1866 to the landing of cables.

The Western Union Telegraph Co. was about to proceed to the laying of two cables from Rockaway Beach or that neighborhood

(Coney Island) to Canso, in Nova Scotia, to be a supplement to and an auxiliary to the land lines which run from Nova Scotia down to New York, and which carried the cable business over the cables then existing between Newfoundland and England. I remember distinctly telling Gen. Eckert, the then president of the company, that in my opinion he was entitled to put those cables on Coney Island under the act of 1866, and my information is that those two cables were landed under that advice.

Later, in 1910, the very large tricore cable, which the Western Union was then engaged in laying, was started at the same place in this country—Coney Island—and was carried up to Newfoundland, and there had a refresher or landing place and thence, as I understand the location of it, to Penzance, England. This was also landed at Coney Island under the act of 1866.

So there is an indication, as you will see, of what the Western Union thought upon that subject by what it did.

Reference was made to the Haiti case and that the Western Union had been guilty of a tremendous inconsistency in connection with that case, and it is important that you should understand just what occurred in connection with that case.

That company never claimed any right, although it was an American company, as I understand the facts in that case, to land on the shores of the United States under the act of 1866; in fact, the records of that company and of the Post Office Department show that not until many years after it had landed, I think not until 1913, if I remember the date correctly, did it ever accept the provisions of the act of 1866. It claimed the right to land about the year 1896, simply because it wanted to, as far as I know. It was coming into this country and creating a serious competition with the Western Union with respect to the whole West Indian business and the South American business, which came to the Western Union at Havana, and was carried by it over the two cables to Key West.

As I say, it claimed the right to land and was proceeding in the exercise of that claim of right when the then vice president of the company and myself called the attention of the Department of Justice to the proposed action of the Haiti company, and the Department of Justice saw fit to go into the Federal court for the southern district of New York and file a suit in the name of the United States against that company, to prevent it from landing under this theory of Executive power. What the Western Union Co. had to do with it was to call it to the attention of the Department of Justice and the Department of Justice took care of the suit, and its details, and everything connected with it, and they set forth, precisely, in substance, what the Government set forth in the recent suit that is now pending on appeal in the Supreme Court of the United States. It came up before the district court—I think it was then the circuit court, because according to my recollection that was before the circuit court jurisdiction had been vested in the district court—and it came up before Judge Lacombe on a motion for a preliminary injunction, and this was the state of facts that was presented.

The company had landed its cable and the motion for preliminary injunction and the bill that was drafted was a bill to enjoin from landing, and, of course, Judge Lacombe, when he came to pass upon

that, said, "The landing has been effected, and you can not have a preliminary injunction to restrain something that has already happened." That was all there was, in effect, in that decision, and I may say that that was what the Western Union had to do with it, except that in order to aid the district attorney it employed the most eminent attorney we could get in New York, to wit, Mr. Elihu Root, sr., to appear in the case and to aid the district attorney. That is the extent of the offending of the Western Union in that particular and the extent of its connection, so that I think there is nothing in that which shows any inconsistency whatsoever in regard to the situation.

Mr. GRAHAM. Were you one of the counsel, Mr. Taggart?

Mr. TAGGART. I was not one of the counsel, except I went with Mr. Vice President Clark to Mr. Root's office when the question was presented. Mr. Clark had had charge of the questions respecting it here in Washington—I have forgotten what they were—and he came to me and asked me to go with him to Senator Root's office. I had nothing to do with the handling of the case in Washington. Vice President Clark had that all to do. I did not even express an opinion on it. I remember that in my conference with Senator Root he asked me what I thought of it, and I said, "I have not studied this case; I do not know anything about it," and left it at that. I saw Senator Root afterwards once or twice, but I did not appear in the case. I took no part in it. I had some other things to do at that time.

Now, that was the situation in reference to that case. I think Senator Root had a good deal to do with determining the form of the bill and the matter of the hearing, and Judge Lacombe expressed some doubts in regard to the situation and as to what were the respective rights of the parties, by way of dictum, in the decision, but he did not pass on it, and what happened afterwards was that some years after that the company, under some negotiation with the State Department, accepted a license. I do not think there is anything else that was of importance in connection with that matter.

Mr. DENISON. May I ask you, did that Haiti-American Co. land its cable?

Mr. TAGGART. Yes; and it has been operating ever since.

Mr. DENISON. It was not stopped from landing?

Mr. TAGGART. It was not stopped from landing, and there was no Navy sent after it and there were no Army officers sent to take care of its employees. It went on operating just as though they had a license from the day it landed, and was operating, I understand, when the suit was brought and while the suit was being carried on.

Mr. DENISON. Let me ask you this question: Without regard to the question of whether you had anything to do with that litigation or not, and supposing that it may be true that the Western Union Co. did try to invoke the aid of the Government in preventing a competitor from coming into its line of business, do you think, as a general proposition, the Western Union, the All America, or any other company engaged in that sort of service ought to try to invoke the aid of the Government to help it in its competition with other companies engaged in the same line of business?

Mr. TAGGART. No; I do not. Vice President Clark, as I remember, came to me and said there was some question about the legality of this

company's right to land; that that had been suggested to him in Washington, as I remember, by some one that he was acting with here in Washington, and he said that Gen. Eckert, who was then president, wanted him to see the Department of Justice or call attention to it, and see if they wanted to take any action. My understanding about it is that the Department of Justice of the Government determined on the action; that it was not the Western Union that determined that question. It was left to the Department of Justice here in Washington, and the Attorney General gave directions to the district attorney in New York. That is my understanding.

Mr. BARKLEY. Relating further to Mr. Denison's question, is it not a fact that the quarrels that have sometimes occurred between large interests have made it necessary to pass laws to protect the public against both of them.

Mr. TAGGART. I guess that is so.

Mr. BARKLEY. Is not that responsible for a great deal of our anti-trust legislation and all other laws that undertaken to regulate business matters?

Mr. TAGGART. That is possible. This was a good many years ago, and we may have done some things then we ought not to have done, and I have no doubt we left undone many things we ought to have done.

Mr. BARKLEY. That is true of all of us.

Mr. TAGGART. There is no question about that.

I do not know that I have anything else I want to take up your time with.

The CHAIRMAN. Is there anyone in the room who wants to have the last word?

Mr. ROOT. May I have five minutes?

Mr. TAGGART. May I withdraw what I just said in order to say one thing which in my haste I overlooked, and that is with respect to the propriety and the necessity of an amendment to the bill either in the form of the proviso to section 1 or in the form of the substitute bill?

I do not understand with respect to that amendment, although it was presented, that the State Department has presented any objections to it, so far as I am advised or as I recollect Mr. Nielsen's position or his discussion with respect to it. He did not discuss it or indicate either opposition or assent, and so far as I understand the All-America Co.'s position with respect to it, there was no real objection to the end that is aimed at in the amendment provided the committee in its legislation or in its view of legislation is going to do anything except prevent the Western Union Telegraph Co.'s cable from Barbados to land on the coast of Florida; that is, if there is any legislation whatever that will permit the Western Union Telegraph Co.'s cable to land, Mr. Root's company is absolutely against it.

That is my understanding of his position, and I do not think I misrepresent it in any way; but that if any legislation of the sort that will permit the Western Union Telegraph Co. to be landed at all was enacted, I was unable to discover where he put his finger on a single thing in this proposed amendment that would be at all unfair or unjust as between any class of cables that the bill would affect; and as I said in my introduction in respect of that amendment, it is

aimed to secure perfect equality with respect not only to the cables licensed by the President, and as to which the question of the value of that license is in dispute in the litigation, and as to the cables created or laid by authority of Congress, either the act of 1866 or the special act, and the Miami-Barbados cable under conditions which subject all of them, after a period of 90 days, to the drastic provisions of section 2 of the act giving the President the right to revoke and substitute new licenses.

We submit that is fair, and I have heard nothing from anyone that it would not be a perfectly fair and just addition to the legislation in order to make this bill what it ought to be, if it is to be passed at all, namely, a bill that would cover past cables already laid under all the conditions which have been described. future cables and cables which have partly been laid and can be completed. I see no reason why they should stand, any one of them, in any different category whatever.

Mr. Carlton has indicated all that it is necessary to be said in regard to the Barbados cable; and we submit, under the facts of this situation, that this amendment ought to be and should be added to the bill, in order to make it a consistent piece of legislation and, as such, should apply to all cables alike.

I thank you, gentlemen.

Mr. JONES. I should like to ask if any of the witnesses have placed in the record the opinion of the circuit court of appeals?

Mr. TAGGART. I have it right here.

Mr. JONES. Is it in a printed form?

Mr. TAGGART. It is in the transcript of record in the Supreme Court. It is very short. I could read it in two minutes.

Mr. JONES. Please put in the record the opinion of the circuit court of appeals in the case.

Mr. TAGGART. I have both the opinion of the United States district court and the opinion of the circuit court of appeals.

Mr. JONES. I should like to have both opinions in the record, if we may. I do not care to have them read.

Mr. TAGGART. The opinion of Judge Hand begins at page 175 of the transcript of record in No. 806 of the Supreme Court of the United States for the October term and ends at page 198, and the opinion of the circuit court of appeals begins at page 209 and ends at page 210. I will hand them to the stenographer for insertion in the record.

(The opinions of the district court and the circuit court of appeals referred to above follow:)

OPINION DENYING MOTION FOR TEMPORARY INJUNCTION.

No. 644. United States District Court, Southern District of New York. United States of America, complainant, against The Western Union Telegraph Company, a corporation, defendant.

This is a suit in equity brought by the United States against the Western Union Telegraph Company to prevent it from making an alleged unauthorized cable connection between the shores of the United States and a foreign country. In July, 1919, the Western Telegraph Company, a British corporation, made a contract with the Western Union Telegraph Company, whereby the former agreed to lay a submarine cable from Para, in Brazil, or such other point on its existing East Coast system as it might select, to Barbados. The Western Union likewise agreed to lay and maintain a submarine cable from Miami, Florida, or some adjacent point, to Barbados. The parties to the agreement likewise con-

tracted to equip a joint station to be maintained at Barbados by the Western Union Telegraph Company, and, respectively, to transmit messages over the resulting "through line" to such parts of South America and Europe as might be practicable. The agreement fixes through rates from Brazil, Argentina, Paraguay, Uruguay, Chile, Bolivia, and Peru to New York.

In order to carry out this agreement the British company constructed its line of cable from Brazil to Barbados, and the Western Union caused the cable ship *Colonia* to proceed to Miami, Florida, for the purpose of laying a cable from that point to Barbados to connect with the British line. The *Colonia* was stopped off Miami by United States destroyers and warned not to lay her cable within three miles of Miami Beach. She thereupon proceeded to lay the cable from a point just outside the three-mile limit, off Miami Beach, southward to Barbados. The end of this cable still lies in the sea three miles off Miami Beach, and the naval forces of the United States are standing watch to prevent the connection of that cable with the shore.

The Western Union having failed to land its cable, planned to splice onto its cable from Barbados a branch cable to connect at Cojimar, Cuba, with three cables which had been theretofore and are now being maintained and operated by the Western Union from Cojimar, Cuba, to Key West, Florida, for the purpose, as the United States contends, of thereby making a cable connection between Brazil and the shores of the United States.

Two of the three cables operated by the Western Union from Key West to Cojimar were laid in 1866 and 1899, respectively, to replace cables theretofore laid. These cables and the ones that they replaced were laid, maintained, and operated without any presidential permit. The third cable was laid in the year 1917 under a presidential permit which contained the following provision:

"5. That the consent hereby granted shall be subject to any future action of the President or of Congress affirming, revoking, or modifying, wholly or in part, the said conditions and terms upon which the consent is given, and subject also to any conventions between the United States and Cuba applicable to said cable lines."

The original cables, of which the first two were replacements, between Key West and Cojimar, Cuba, are stated by the Western Union to have been laid by the predecessor in interest of the defendant pursuant to a special act of Congress approved May 5th, 1866, authorizing the laying of such cables between Florida and Cuba. The third cable between Key West and Cojimar, laid in 1917, is alleged by the defendant to have been authorized under the general act of Congress of July 24th, 1866, with the approval also of the War Department under the act of March 3rd, 1899 (the river and harbor act).

The cable attempted to be laid between Barbados and Miami Beach is likewise said by the defendant to be authorized by the act of Congress of July 24th, 1866. The formal authorization of the Secretary of War has been signed but is withheld because the Executive has withheld his approval of the proposed connection involved.

The interference by the Government with the laying of the last-mentioned cable and with the splicing into it of a branch cable to connect at Cojimar, Cuba, with the present three cables that are landed at Key West, is justified upon the ground that the President disapproves of a connection between the lines of the defendant and those of the Western Telegraph Company, because that British company by grant of the Brazilian Government has exclusive rights in the ports of Brazil at which it has established offices.

The President has issued to the Western Union a modified permit covering the three Key West cables and containing a condition that the cables should not be used as a link in a line connecting shores of the United States with a line enjoying an exclusive foreign monopoly. The Western Union has refused to accept this modified permit.

The Western Union heretofore brought a suit in the Supreme Court of the District of Columbia against the Secretary of State, the Secretary of War, and the Secretary of the Navy to enjoin them from interfering with its acts, and moved therein for an injunction pendente lite, which motion Judge Stafford has taken under advisement.

As the United States was not a party to the suit brought in the District of Columbia, it could obtain no affirmative relief therein. This suit was accordingly brought.

Francis G. Caffey, United States attorney, solicitor for complainant; Francis G. Caffey and Earl B. Barnes, counsel.

Rush Taggart, solicitor for defendant; Rush Taggart, Joseph P. Cotton, and Francis R. Stark, counsel.

AUGUSTUS N. HAND, *district judge*:

Two questions of law arise: (1) Whether in the absence of congressional legislation the President has the power to prevent unauthorized cable landings on the shores of the United States, or the operation of cable lines connecting with foreign countries in a way contrary to executive policy. (2) Whether there is any congressional legislation under which the defendant may validly operate. If there is, all parties concede that no Executive permission is necessary.

The right of the United States to secure a judicial decision as to the legality of the steps proposed by the Executive and, if they be lawful, to secure injunctive relief against the defendant is not questioned by any of the parties to this suit and seems to be warranted by the decision of the Supreme Court in the case of *In re Debs*, 158 U. S., 564.

If the President has the original power sought to be exercised, it must be found expressly, or by implication, in the Constitution. It is not sufficient to say that he must have it because the United States is a sovereign Nation and must be deemed to have all customary national powers, *Knox v. Lee*, 12 Wall., 457. However true this may be, it does not follow that the Executive has the necessary authority. Certainly many, if not most, Executive powers flow from legislative enactments. There is no doubt that Congress by virtue of its authority to regulate foreign commerce could regulate the laying and operation of cables, and has often done this. I can not regard a failure by Congress to exercise its undoubted powers as proof that some other branch of the Government has the right to do what Congress might readily have authorized.

The powers of the President are set forth in Article II of the Constitution. Section I, subdivision 1, of that article provides that:

"The Executive Power shall be vested in a President of the United States of America. \* \* \*"

Subdivision 8 requires that before the President enters on the execution of his office he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

By Section II, the President is made Commander in Chief of the Army and Navy, and is given power, by and with the advice and consent of the Senate, to make treaties and to appoint ambassadors and other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not otherwise provided for in the Constitution and which shall be established by law.

By Section III, the President is given the right to receive ambassadors and other public ministers and it is provided that—

"He shall take care that the laws be faithfully executed; \* \* \*"

It is reasonably plain from the foregoing enumeration of the President's powers that such decisions as *In re Debs*, 158 U. S. 564; *In re Neagle*, 135 U. S. 1; the Chinese Exclusion case, 130 U. S. 581; and *Fong Yue Ting v. United States*, 149 U. S. 698, do not dispose of the questions involved in the present controversy. In the above cases Congress had passed laws for the carrying of the mails, the holding of circuit courts, and the exclusion of aliens. The executive department of the Government in every case was enforcing these laws or seeing that enforcement was not impeded, and the court in substance held that such action was necessarily within the executive prerogative. The constitutional grant of general executive power and the specific provision that "He shall take care that the laws be faithfully executed," each necessarily called for the judicial decisions which were rendered.

The power here invoked is far more doubtful than in the instances I have cited where it could be justified as an executive enforcement of legislative provisions. In this case, if it exists at all, it must be derived by implication from the sweeping grant of general executive power which the Constitution says "shall be vested in a President," and by the special authority to make treaties and appoint ambassadors, by and with the advice and consent of the Senate, and to act as Commander in Chief of the Army and Navy.

It can hardly be doubted that the President as Commander in Chief of the Army and Navy could repel any forces coming to this country with apparent hostile purpose, even though no war had been declared by the Congress. If there should be any reasonable basis for regarding such an attempt as imminent,

the matter doubtless would be non justiciable, because it would be then the prerogative of the President to determine the degree of danger and the necessary means to be employed.

While it is contended by the Government that the control of cables would be useful in time of war, it is nowhere suggested that there is any hostile purpose in the attempt to land the cables of the Western Union at Miami Beach.

Under the war power, as was said by Judge Learned Hand in the case of *Commercial Cable Co. v. Burluson*, 255 Fed. 99, Congress can empower the President to seize cables and can delegate to him the absolute determination as to the necessity of doing this, but it does not appear from the opinion in that case that by Congress or in the exercise of the delegated legislative powers given him by Congress, or in the exercise of his constitutional power to negotiate treaties, could seize cables even in time of war without legislative authority. A different question might, of course, arise if the President as Commander in Chief of the Army and Navy were obliged in order to conduct military operations to seize cables, without congressional authority, that were found within the field of military operations itself.

The implications of the power contended for by the Government are very great. If the President has the right, without any legislative sanction, to prevent the landing of cables, why has he not a right to prevent the importation of opium on the ground that it is a deleterious drug, or the importation of silk or steel because such importation may tend to reduce wages in this country and injure the national welfare? In the same way, why does not the President, in the absence of any act of Congress, have the right to refuse to admit foreigners to our shores, and to deport those aliens whose presence he regards as a public menace? While the prerogative of the British Crown in respect to the admission and deportation of aliens is not clearly ascertainable, its right, in the absence of an act of Parliament, to refuse permission to aliens to enter British territory was contested by Sir W. Phillimore on behalf of the alien, in 1891, in the case of *Musgrove v. Chun Tecon Toy*, L. R. (1891) A. C. 272, and the Privy Council said that the question involved such important consideration that they would express no opinion as to it, and would decide the case solely under the act of Parliament invoked by the Australian Government. Lord Herschell intimated that no authority existed that an alien had a right of action for exclusion from the country.

As eminent an authority as Professor Dicey makes the unqualified assertion in his book on the Law of the Constitution that—

“The Crown can not, except under statute, expel from England any alien whatever, even though he were a murderer who, after slaughtering a whole family at Boulogne, had on the very day crossed red-handed to Dover. The executive, therefore, must ask for, and always obtain, aid from Parliament. An alien act enables the ministry in times of disturbance to expel any foreigner from the country; a foreign enlistment act makes it impossible for the ministry to check intervention in foreign contests or the supply of arms to foreign belligerents. Extradition acts empower the Government at the same time to prevent England from becoming a city of refuge for foreign criminals, and to cooperate with foreign States in that general repression of crime in which the whole civilized world has an interest. Nor have we yet exhausted the instances in which the rigidity of the law necessitates the intervention of Parliament. There are times of tumult or invasion when, for the sake of legality itself, the rules of law must be broken. The course which the Government must then take is clear. The ministry must break the law and trust for protection to an act of indemnity. A statute of this kind is (as already pointed out) the last and supreme exercise of parliamentary sovereignty. It legalizes illegality; it affords the practical solution of the problem which perplexed the statesmanship of the sixteenth and seventeenth centuries, how to combine the maintenance of law and the authority of the Houses of Parliament with the free exercise of that kind of discretionary power or prerogative which, under some shape or other, must at critical junctures be wielded by the executive government of every civilized country.” (4th Ed. pp. 339-340.)

An act of indemnity, somewhat like the one mentioned by Professor Dicey, was upheld by the Supreme Court as a valid act of the Legislature of the Philippine Islands in the case of *Tiaco v. Forbes*, 228 U. S., p. 549.

Certainly if the prerogative of the British Crown acting through a ministry which as executive of the nation has been obliged to deal for many generations with the most complex international situations, does not include the right to

deport even most troublesome aliens, the existence under the constitution of an implied executive power of the sort contended for seems most doubtful.

It must be remembered that the Constitution gives only to Congress the power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes," and "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or any department or officer thereof." The Government, however, contends that the Executive has the power to prevent the landing of cables and other physical connection of foreign countries with this country, because Congress has long acquiesced in Executive regulation of such matters in cases where Congress has not acted. From the time of the administration of President Grant there has been frequent and growing insistence by the Executive upon the right to regulate the landing of cables connecting with foreign countries, and this alleged prerogative has been recently extended to grant permits to light lines, oil lines, telephone lines, aerial railways, and pipes for the disposal of waste from the manufacture of soda ash. The exercise of this Executive power has been acquiesced in by various corporations who perhaps found it easier to obtain a permit than to attempt to resist the Executive. President Grant, in a message to Congress in December, 1875, referred to a French company which proposed to lay a cable from the shores of France to the United States. President Grant stated in his message that he could not concede that any power should claim the right to land a cable on the shores of the United States and at the same time deny to the United States, or to its citizens or grantees, an equal right to land a cable on its shores, and adds:

"The right to control the conditions for the laying of a cable within the jurisdictional waters of the United States, to connect our shores with those of any foreign State, pertains exclusively to the Government of the United States under such limitations and conditions as Congress may impose. In the absence of legislation by Congress I was unwilling on the one hand to yield to a foreign State the right to say that its grantees might land on our shores while it denied a similar right to our people to land on its shores; and on the other hand I was reluctant to deny to the great interests of the world and of civilization the facilities of such communication as were proposed. I therefore withheld any resistance to the landing of the cable on the condition that the offensive monopoly feature of the concession be abandoned, and that the right of any cable which may be established by authority of this Government to land upon French territory and to connect with French land lines and enjoy all the necessary facilities or privileges incident to the use thereof upon as favorable terms as any other company be conceded. As the result thereof, the company in question renounced the exclusive privilege, and the representative of France was informed that, understanding this relinquishment to be construed as granting the entire reciprocity and equal facilities which had been demanded, the opposition to the landing of the cable was withdrawn."

President Grant then set forth conditions which he thought should be exacted before allowing foreign cables to land and said:

"I present this subject to the earnest consideration of Congress.

"In the meantime, and unless Congress otherwise direct, I shall not oppose the landing of any telegraphic cable which complies with and assents to the points above enumerated, but will feel it my duty to prevent the landing of any which does not conform to the first and second points as stated and which will not stipulate to concede to this Government the precedence in the transmission of its official messages and will not enter into a satisfactory arrangement with regard to its charges."

There is attached to the moving papers letters from Secretaries of State Fish, Evarts, Blaine, and Day (now Mr. Justice Day) requiring Executive permits, as well as from Secretary Bayard and Secretary Root and Attorneys General Griggs, Knox, Wickersham, and McReynolds (now Mr. Justice McReynolds). The only break in this continuous position taken by the Executive branch of the Government for the last 50 years was during the administration of President Cleveland. Secretaries Gresham and Olney declined to exercise the power upon the ground that presidential action would not be binding upon Congress and that the President was without power.

In 1898 Acting Attorney General Richards (22 Op. Atty. Gen., 25-7) rendered an elaborate opinion in regard to this matter in which he summarized the position of the Government by saying:

"I am of the opinion, therefore, that the President has the power, in the absence of legislative enactment, to control the landing of foreign submarine cables. He may either prevent the landing, if the rights entrusted to his care so demand, or permit it on conditions which will protect the interests of this Government and its citizens; and if a landing has been effected without the consent or against the protest of this Government respect for its rights and compliance with the terms may be enforced by applying the prohibition to the operation of the line unless the necessary conditions are accepted and observed."

Under such circumstances, unless congressional legislation regulating foreign telegraphic business can be invoked, it may be reasonably contended that Congress has acquiesced in the long-continued claims of the Executive.

In the recent case of *United States v. Midwest Oil Co.*, 236 U. S. 459, it appeared that there had been an Executive practice of long standing to withdraw public lands from sale whenever the President thought best, although Congress had opened them to occupation. This withdrawal had been made pending proposed legislation in spite of the fact that Congress had declared public lands containing petroleum or oil free and open to occupation, exploration, and purchase by citizens of the United States, under regulations prescribed by law. The majority of the Supreme Court (three justices dissenting) held that the long-continued practice of the Executive, with the knowledge of Congress, amounted to a consent by the latter to have the President act as agent over the public domain for the purpose of withdrawing lands from sale. Mr. Justice Lamar, speaking for the majority, remarked that Congress not only has a legislative power over the public domain, but also exercises the powers of a proprietor; that like any owner it may provide when and to whom its land may be sold and may be withdrawn from sale. He added:

"The Executive, as agent, was in charge of the public domain; by a multitude of orders extending over a long period of time and affecting vast bodies of land, in many States and Territories, he withdrew large areas in the public interest. These orders were known to Congress, as principal, and in not a single instance was the act of the agent disapproved. Its acquiescence all the more readily operated as an implied grant of power in view of the fact that its exercise was not only useful to the public but did not interfere with any vested right of the citizen."

In the foregoing case of *United States v. Midwest Oil Co.*, the court held that a congressional consent had been established which justified the exercise of Executive power in the absence of further legislation. This conclusion was reached in spite of previous expressions both by the President and in the Senate as to the inadequacy of Executive power. (See President's message of January 14, 1910.) In fact, a law had already been passed empowering the President in the future to withdraw lands which did not ratify his former actions but expressly left the Government and individual citizens free to assert their respective legal rights. The present case in some respects resembles *United States v. Midwest Oil Co.* supra. While the original power of the President in such matters is questionable, the long-continued practice of the Executive after a formal message to Congress by President Grant regarding foreign cable connections may indicate their willingness to have the Executive take the kind of action that is here insisted upon in cases where there is no appropriate legislation covering the subject matter.

Judge Lacombe, in the case of *United States v. La Compagnie Francaise*, etc., 77 Fed. 495, where a cable company having no franchise under the post roads act was involved, said that:

"Without the consent of the General Government, no one, alien or native, has any right to establish a physical connection between the shores of this country and that of any foreign nation. Such consent may be implied as well as expressed, and whether it shall be granted or refused is a political question, which, in the absence of congressional action, would seem to fall within the province of the Executive to decide."

I have thought it most questionable whether the power of the President to regulate cable connections is expressed or implied in the Constitution, but if Congress, which has control over foreign commerce, has chosen to allow the President to prevent physical connections between the shores of this country and of foreign nations by cables, telephones, radio devices, or pipe lines, the occasion and mode of such Executive action would seem, as Judge Lacombe intimated, to be a political question. I should doubt whether the extent of the President's authority, if based not upon an original prerogative, but upon congressional acquiescence, was a justiciable matter and whether a court should

interfere to define or support it, for the basis of the right would then depend on the interrelations and mutual accommodations of the executive and legislative departments of the Government, and not upon strict law. See *Musgrove v. Chun Tecon Toy*, L. R. (1891), A. C. 272.

It remains to inquire whether any acts of Congress justify the defendant's position. The Western Union principally relies upon the act of May 5, 1866 (14 Stat. at L., 44), the so-called post roads act of July 24th, 1866 (14 Stat. at L., 221), reenacted as section 5263 of the Revised Statutes, and the interstate commerce act.

The first act granted to the International Ocean Telegraph Company a sole franchise to lay and operate cables to Cuba for fourteen years. It provided that this company, which is a predecessor of the Western Union, "their successors and assigns, shall have the sole privilege for a period of fourteen years from the approval of this act to lay, construct, land, maintain, and operate telegraphic or magnetic lines or cables in and over the waters \* \* \* over which the United States have jurisdiction from the shores of the State of Florida \* \* \* to the Island of Cuba \* \* \* and other West India islands."

It is contended by the Western Union that the foregoing language gave a sole franchise for fourteen years, covering the first two cables from Key West and embodied by implication a license to operate beyond that time, revocable at the pleasure of Congress. Certainly it would be strange to suppose that Congress intended to require the cables to be removed or abandoned and that it did not after fourteen years expect the original lines to be replaced if repairs or improvements were necessary. Less than this involves a situation so unlikely and unreasonable that both the implications of the situation and the acquiescence of Congress in the operation of two cables from Key West to Cojimar for about forty years since the limited franchise expired, and for twenty or thirty years since the new cables were laid, leaves no field for Executive action. The language of the city ordinance in the case of *Des Moines City Ry. Co. v. City of Des Moines*, 151 Fed., 854, is somewhat different from that in the act of May 5, 1866. There the city of Des Moines granted a franchise to operate a street railway "for the time and upon the conditions hereinafter mentioned and prescribed." And by a subsequent section provided that:

"The right herein granted to said company to operate said railway shall be exclusive for the term of thirty (30) years from the time the first mile of said track is laid and cars running thereon. \* \* \*"

The court held that the foregoing grant created a continuing franchise which was exclusive for only thirty years. This case was reversed by the Supreme Court because no Federal question was involved by a decision reported at 214 U. S. 179. The question here involved was naturally not discussed and the decision that the grant created a perpetual franchise rather than a revokable license succeeding the exclusive franchise of thirty years may be doubtful; yet the language of section 10 of the ordinance taken by itself, perhaps, suggests a franchise for a longer period. In any event, the implication of a revokable license is different from that of a perpetual franchise and should require much clearer evidence.

The post roads act of July 24th, 1866, supra, provides:

"That any telegraph company now organized, or which may hereafter be organized, under the laws of any State in this Union shall have the right to construct, maintain, and operate lines of telegraph through and over any portion of the public domain of the United States, over and along any of the military or post roads of the United States which have been, or may hereafter be, declared such by act of Congress, and over, under, or across the navigable streams or waters of the United States; provided that such lines of telegraph shall be so constructed and maintained as not to obstruct the navigation of such streams and waters, or interfere with the ordinary travel on such military or post roads."

There is a further provision that Government messages shall be entitled to priority and shall be taken at rates to be fixed by the Postmaster General.

An opinion was rendered by Attorney General Williams in 1872 (14 Op. Atty. Gen. 63), which, it is to be noticed, is prior to the decision of the Supreme Court in *Pensacola Telegraph Co. v. Western Union Telegraph Co.*, 96 U. S. 1, that this act was only intended to apply to interior lines of telegraph designed for communication between points within the United States, and to exterior oceanic lines designed for telegraphic intercourse with foreign lands. But a telegraph line under "navigable streams" and "waters" is generally known

as a cable, and waters within one marine league of the shores have been frequently termed "the navigable waters of the United States." While the several States have jurisdiction in some respects over waters within the three mile limit, their jurisdiction is subject to the paramount power of the Federal Government over interstate and foreign commerce. See *Stockton v. B. & N. Y. R. Co.*, 32 Fed. 9.; *Illinois Central Ry. Co. v. Illinois*, 146 U. S. 435; *Manchester v. Massachusetts*, 139 U. S. 246.

It appears from the record in the Supreme Court in the case of *Pensacola Telegraph Co. v. Western Union Telegraph Co.* (96 U. S., 1) that the Western Union had obtained a Federal franchise under the post roads act by accepting the restrictions and obligations therein, and that its business was foreign as well as interstate. It owned the stock of the International Ocean Telegraph Company, and by means of the two Key West cables of the latter laid under the act of May 5, 1866, could transmit messages to the island of Cuba. It also owned telegraph lines extending through Nova Scotia, in the Dominion of Canada, and connecting with Europe.

The foregoing Pensacola telegraph case apparently sanctions the doing of a foreign business by a domestic telegraph company which has come in under the act of July 24th, 1866—at least so far as the portion of the business conducted within the United States is concerned. The Supreme Court in the *Pensacola* case (96 U. S., at p. 9), speaking of the rights of the Western Union under the post roads act, said:

"The telegraphic announcement of the markets abroad regulates prices at home, and a prudent merchant rarely enters upon an important transaction without using the telegraph freely to secure information.

"It is not only important to the people but to the Government. By means of it the heads of the departments in Washington are kept in close communication with all their various agencies at home and abroad and can know at almost any hour by inquiry what is transpiring anywhere that affects the interest they have in charge.

\* \* \* \* \*

"There is nothing to indicate an intention of limiting the effect of the words employed, and they are, therefore, to be given their natural and ordinary signification. Read in this way, the grant evidently extends to the public domain, the military and post roads, and the navigable waters of the United States. These are all within the dominion of the National Government to the extent of the national powers, and are therefore subject to legitimate congressional regulation." \* \* \*

The court further remarked in the case of *Telegraph Co. v. Texas* (105 U. S., at p. 64) that—

"The Western Union Telegraph Company, having accepted the restrictions and obligations of this provision by Congress, occupies in Texas the position of an instrument of foreign and interstate commerce and of a Government agent for the transmission of messages on public business."

Counsel for defendant calls attention to Order No. 3252 of the Post Office Department of July 1st, 1920, in which the Postmaster General declares that pursuant to the authority vested in him by the foregoing act of Congress approved July 24th, 1866, he fixes the rates over the cables of the United States and Hayti Telegraph & Cable Company between New York and South America for the Government. It thus appears that this department of the Government recognizes the post roads act as giving the right to conduct a foreign telegraphic business over which Government rates must be fixed as prescribed by the act.

In the interstate commerce act, subdivision 1 of section 1, it is provided:

"That the provisions of this act shall apply to common carriers engaged in \* \* \* (c) the transmission of intelligence by wire or wireless from \* \* \* or to any place in the United States to or from a foreign country, but only in so far as such transportation or transmission takes place within the United States."

It goes on to say at subdivision 3 that a common carrier shall include "all cable companies operating by wire or wireless"; and section 15 of the act empowers the commission to fix rates. The commission officially declared its right to fix foreign cable rates in the case of *White v. Western Union*, 33 Interstate Commerce Commission Reports, 500.

It is argued that in spite of the act of July 24th, 1866, and the interstate commerce act, which certain features of defendant's business may be regulated, and though both acts apparently cover telegraphic business originating

in this country and destined for foreign countries, yet the power of the Executive remains to prevent a domestic corporation for many years engaged under a Federal franchise in a foreign cable business from making new cable connections. It may be that the President, before Congress has acted, may exercise this power in respect to a foreign cable company having no congressional franchise. This is claimed to have been substantially the situation in the case of the French Cable Company decided by Judge Lacombe. But in respect to the Western Union, which by the act of July 24th, 1866, supra, possesses a Federal franchise covering a business with foreign countries and regulated as to rates by an agency of the Government created by Congress, it seems unreasonable to hold that Congress has not occupied the field, and legislated so generally in regard to this defendant that it has withdrawn it from the exercise of Executive power in respect to foreign cable connections. It will be said that while the defendant can take foreign messages and transmit them throughout the United States, it can not carry or transmit them through a connecting line beyond the shores of this country without permission of the President. My answer is that Congress has gone too far to make this position tenable.

It will similarly be contended that domestic corporations which transmit their cable messages to foreign countries have done this through Executive or congressional permission just as the Western Union Telegraph Company did in the Pensacola case, supra, through the International Ocean Telegraph Company, which had a special franchise from Congress authorizing it to operate a cable to Cuba. It will be further said that the exercise of Executive control has been frequent since the interstate commerce act purported to regulate electric transmission of all kinds, and that in August, 1914, the President established a naval censorship over all radio messages to insure neutrality, and did this with the apparent acquiescence of Congress.

I think the last incident may well have been an original exercise of Executive power to enforce the obligation of neutrality, which seems to be an international obligation in a legal sense. *United States v. Arjona*, 120 U. S. 488; *The Paquete Habana*, 175 U. S. 700. It is to be observed that the power in question has never heretofore been exercised in the case of cable companies which at the time subjected themselves to the conditions of the post roads act, except in the case of the Western Union when the presidential permit for the third Key West cable was issued to it in 1917 without its knowledge or application, and in the case of the Commercial Pacific Cable Company. The conditions in the first permit were entirely innocuous and the antimonopolistic provisions in the second permit have, it is stated, not been enforced. The Executive regulation of domestic corporations governed by the post roads act therefore comes down to but two instances, neither of which is impressive.

I should be more affected by the claims of Executive power made from time to time by the eminent officials who have occupied the offices of Secretary of State and Attorney General if their opinions had been rendered as to the effect of the acts of Congress which I have discussed. As it is, most of them have done little more than follow a precedent set by President Grant under circumstances differing from the present. It is very easy for any official to follow a general departmental custom when his department has once taken a position, and the assertion of the position must be regarded as very different in real weight from the reasoned opinion of the official.

As domestic telegraph corporations subject to the provisions of the post roads act and to the regulations of the Interstate Commerce Commission have apparently been dealt with on only two occasions, the facts of the case do not appear to indicate a continuous current of legal opinion in the Departments of State and Justice which can be said to support the position now contended for by the Government, and they certainly do not indicate any conscious acquiescence on the part of Congress in the position now taken.

In spite of all that has been said about physical connections and trespasses, the acts of the defendant amount to nothing more than carrying foreign messages beyond the shores of this country which it at least initiates in the United States and transmits to the marginal waters under a Federal franchise.

Under all the circumstances I think the complainant must fail because—

(1) As to the two old Key West cables, they were laid and are operated with the consent of Congress, evidenced by the act of May 5, 1866, and by long-continued acquiescence.

(2) As to all the cables, including the third Key West Cable and the Barbados cable, the defendant has a right to carry on foreign commerce by reason of the post-roads act as construed by the Supreme Court in *the Pensacola case*.

The connection of its lines with cables laid outside the three-mile limit is an act within a field as to which Congress has generally legislated so as to free it from the Executive control sought to be exercised.

If I thought any irreparable damage could be suffered by the United States before an appeal could be heard, or Congress could legislate, I should be inclined to grant a preliminary injunction even though I differed with the views of the Government as to Executive power. As matters stand, I can see no present danger to national interests; and believing that the so-called Executive power to restrict unauthorized foreign cable connections does not apply to this case, I deny the motion for a preliminary injunction and vacate the restraining order heretofore granted.

A. N. H., D. J.

FEBRUARY 25, 1921.

United States Circuit Court of Appeals for the Second Circuit. The United States of America, appellant (complainant below), against Western Union Telegraph Company, appellee (defendant below).

Before Ward, Hough, and Manton, circuit judges.

Francis G. Caffey, United States attorney, for the United States (Earl B. Barnes, assistant U. S. attorney, of counsel).

Rush Taggart, Joseph P. Cotton, and Francis R. Stark, for Western Union Telegraph Company.

*Per Curiam:*

The Western Union Telegraph Company, a corporation of the State of New York, entered into a contract with the Western Telegraph Company, Ltd., a British corporation, whereby the American company agreed to lay a submarine telegraph cable between the island of Barbados, West Indies, and a point on Miami Beach, on the east coast of Florida, and the British company agreed to lay a cable from Brazil to Barbados, to be there connected with the cable of the American company. The British company has an interport monopoly of ocean-cable communication given it by the Government of Brazil which excludes American companies from operating cables directly from the United States to Brazil.

When the Western Union Telegraph Company was about to land the American end of its cable at Miami Beach the President forbade its doing so and has actually prevented the landing by means of United States naval vessels. The end of the cable is now buoyed a little more than a marine league from Miami Beach.

Thereupon the Western Union Telegraph Company, which has three cables from Key West, Florida, to Cojimar, Cuba (one laid upon the Fort Taylor Military Reservation under a permit of the Secretary of War dated January 4, 1917, and the other two laid without permit), proposed to splice one of these cables into its uncompleted cable and to deliver messages from the United States to the British cable company in the West Indies, to be re-sent to destination and vice versa to receive from the British company messages for the United States and resend them over its own cable.

The President has revoked the permit heretofore granted for one of the cables between Key West and Cojimar and has transmitted a permit to the Western Union Telegraph Company for all three cables, which the Western Union Telegraph Company has refused to accept.

The United States filed a bill in equity in the United States District Court for the Southern District of New York asking, among other things, for a preliminary injunction to prevent the landing of the cable at Miami Beach and also to prevent the sending of messages originating in or addressed to Brazil over the Key West-Cojimar cable, which motion was denied, and this appeal taken under art. 129 of the Judicial Code.

Concededly the right to permit or to prohibit the landing of cables between foreign countries and the American coast is in Congress under its power to regulate commerce between the States and between the States and foreign countries. In point of practice Congress on several occasions has done so by acts of Congress, and sometimes the President has done so as Chief Executive, and sometimes cables have been laid by corporations without any permit at all. We think no practice has been established sufficient to sustain the contention that the President has such power as Chief Executive, and our inclination also is to think that the Western Union Telegraph Company has the right to land

its cable on the beach near Miami, Florida, under the post road act. However, as there is a necessity for getting this important case before the Supreme Court before it rises, the order of Judge Augustus N. Hand denying the preliminary injunction is affirmed and, only questions of law being involved, we dispose of the case finally by directing the court below to dismiss the bill, any question as to stay being within its discretion.

(Endorsed:) United States Circuit Court of Appeals, Second Circuit. The United States of America against Western Union Telegraph Company. (Copy.) Opinion. Per curiam.

The CHAIRMAN. Mr. Root, you may proceed for five minutes.  
Mr. ROOT. I thank you, Mr. Chairman.

#### ADDITIONAL STATEMENT OF MR. ELIHU ROOT, Jr.

Mr. Root. Mr. Chairman and gentlemen of the committee, in view of the fact that there is a certain dispute as to the termination of the New York-Haitian case, may I put in the record a letter dated June 13, 1898, from the then Secretary of State to the then Attorney General, showing that that controversy was terminated by a complete surrender of the New York-Haitian Co., by which it accepted all the limitations required by the Government?

The CHAIRMAN. Yes, sir.

(The letter referred to by Mr. Root from the Secretary of State under date of June 13, 1898, follows:)

No. 5821.

UNITED STATES OF AMERICA.

DEPARTMENT OF STATE.

*To all whom these presents shall come, greeting:*

I certify that the document hereto annexed is a true copy from the files and records of this department.

In testimony whereof I, Charles E. Hughes, Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the chief clerk of the said department, at the city of Washington, this 7th day of May, 1921.

[SEAL.]

CHARLES E. HUGHES,  
*Secretary of State.*  
By BEN. G. DAVIS, *Chief Clerk.*

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DEPARTMENT OF STATE,  
*Washington, June 13, 1898.*

To the honorable the ATTORNEY GENERAL.

SIR: Referring to my letter of the 24th ultimo, in relation to the suit brought by the United States in the southern district of New York for the purpose of enjoining the United States and Haiti Telegraph and Cable Co. from landing its cables on Coney Island, in the State of New York, I have the honor to inform you that I have received from the company a copy of resolutions adopted by its board of directors at a meeting held at the office of the company in New York City on the 11th of the present month. By the first resolution it is agreed that neither the company, its successors or assigns, "nor any cable with which it connects," shall receive from any foreign government exclusive privileges which would prevent the establishment and operation of a cable of an American company in the jurisdiction of such foreign government. As the company, by this resolution, accepts the condition to which objection has heretofore been made, I have the honor to say that this department has no objection to the dismissal of the suit in question.

You will observe that by the fifth resolution the company agree that the rates charged to the general public shall never exceed the present rates. In

connection with this resolution, it is proper to advert to the fact that according to the sworn statement of the vice president and general manager of the company, made on March 9, 1898, it appears that since permission to land a cable from Haiti in the United States was sought by the French company in 1889, there has been a reduction in rates on messages from the United States to places in the West Indies, Venezuela, and British, Dutch, and French Guiana, of from 35 to 70 cents a word.

Respectfully, yours,

WILLIAM R. DAY.

Mr. Root. One matter of fact. Mr. Carlton produced this map [indicating]. On the end [indicating] you will see a number of towns with names in black. He referred to those towns, I believe, as important commercial ports, and he said that the All-America Co. was not barred from entering them.

He submitted to his stockholders a few weeks ago an annual report, and at the bottom of page 21 you will find this statement in reference to this same British coastal monopoly:

Under this concession the Western Co. had connected all coastal points of commercial importance.

That report was signed by Newcomb Carlton, president. Of the two statements, the one contained in the annual report was true.

Mr. NEWTON. Do I understand that the All-America Co. has a concession from the Brazilian Government permitting the laying of a cable from Rio to this island off the coast of Brazil?

Mr. Root. Yes, sir; that is true.

Mr. NEWTON. Then there is nothing, in so far as a concession is concerned, to prevent you from running the cable from Rio, where it is now, up to the island, and then to Guantanamo, just, as I understand, Mr. Carlton stated?

Mr. Root. That is quite true. If there were no question of supporting the cable it could be done, but the fact is you can not support a cable by reaching one port only; that makes it impossible for us to construct the line. The Western Union Telegraph Co. reached that same conclusion when it considered the construction of its own line, and you will find that statement, in no ambiguous terms, on the same page of the report:

In 1917 the Western Union Co. opened negotiations with the Republic of Brazil, and in the course of a year a concession was granted covering a cable from Brazil to the United States. In 1873 Brazil granted a 60-year concession to the Western Telegraph Co., a British corporation, whereby all other cable companies were precluded from connecting any two points already connected by the Western system. Under this concession the Western Co. had connected all coastal points of commercial importance. It was the Western Union's intention to run the proposed cable to Rio de Janeiro, and from Rio south to Buenos Aires, and to connect with the important points on the Brazilian coast by means of land lines. On study, however, it was found that the land lines were impracticable, and in order to reach other important Brazilian cities the system of the Western Co. had to be utilized.

They then went ahead and said that under those circumstances they could not do it.

Mr. NEWTON. If there was any monopoly to the Western Co., how far does it extend from Rio?

Mr. Root. To the northernmost port in Brazil—every important port until you get to Rio.

Mr. NEWTON. How many would you say were important?

Mr. ROOT. All the ports touched at by the British company.

Mr. NEWTON. You think that they got them all?

Mr. ROOT. Yes, sir; and so does Mr. Carlton.

Mr. HOCH. Does the British monopoly operate only where the British company has preempted the territory?

Mr. ROOT. Yes, sir.

Mr. HOCH. And if another company goes there first, then the monopoly is defeated to that extent?

Mr. ROOT. No; they forbid anybody else coming to that point.

Mr. HOCH. If they have not been connected with the British company?

Mr. ROOT. I think the monopoly does not say what happens in that event; but all the more important ones are already connected.

Mr. JONES. Would you join the Western Union Telegraph Co. in Brazil?

Mr. ROOT. Yes.

Mr. JONES. Would you go into the same ports where the British company is?

Mr. ROOT. If they did not establish block rates against us, and we would go to those over the British line, subject to the inspection that we have been talking about.

Mr. Carlton spoke of the All-America Co., and said that he considered it not a little company, but a great one. That is a proposition of fundamental importance. It is a great company, but greatness is comparative. It is true that the All-America Co. has a property value of some \$30,000,000. You take the Western Union property, and you will find in this same report, on page 2, that the investment is given at \$234,000,000. That is approximately seven times or eight times the size of the All-America Co. They have with them as ally the British Western Telegraph Co., and in point of size, when you put them together, the odds are something like 10 to 1, comparatively. We are the small fellow, and Mr. Carlton knows it. Let me read you a letter that he addressed to the All-America Co., dated May 3, 1919, which you will find on page 37 of the memorandum:

DEAR MR. MERRILL: I have your letter of May 2, and beg to advise that your conclusions are entirely satisfactory to my company.

Of course, you knew perfectly well when you wrote that the message from which you quote was in no wise a threat and I would not respond upon your time were it not to record what is self-evident, namely, that the message was intended to make the matter clear to you since from your messages it was apparent that you had not sensed the situation. It is also needless to remark that the Western Union does not threaten anyone, and especially not the little fellow.

Faithfully, yours,

(Signed) NEWCOMB CARLTON, *President.*

He says that we are in no danger. On page 102 of the Senate record he made a remark on that subject. He was speaking about the fact that our company had no land line system to collect its business, and he said:

However, I should add that we believe that none of the companies that have only cable systems can survive.

When he made that statement he realized that the effect of the combination which has been described to you might be fatal to our company. That is true.

Let me say one last thing. If the committee entertains any doubt in its mind as to the difference in the value to this company of getting messages through over American-owned lines as opposed to lines with British intermediate links, may I ask you to supplement the scant information I have been able to give you by going into executive session and calling for the matter which is in the possession of the Executive?

I thank you, gentlemen.

Mr. DENISON. Where do your Pacific cables land from South America?

Mr. ROOT. If you will look at the page opposite page 14 in the memorandum you will find a map indicating that.

Mr. DENISON. Where do you land in the United States?

Mr. ROOT. One-half of the system goes to Galveston and the other half up to New York.

Mr. DENISON. Do you collect from any particular company in the United States?

Mr. ROOT. No, sir; we get business from and give business to everybody.

Mr. BURROUGHS. Will you not please describe, briefly, if you can, the course which a message will take under present conditions sent over your line to any city in Brazil from the city of New York?

Mr. ROOT. If it was sent to Rio from New York it would go from New York to a relay station in the east end of Cuba, then down to Colon, then along down the west coast of South America to Valparaiso, then across to Buenos Aires in Argentina, then up to Montevideo in Uruguay, and then straight over the line to Rio. If we had to go up any further we would have to call for mercy from the British company.

Mr. BURROUGH. You would have to cross the Andes?

Mr. ROOT. Yes, sir.

Mr. BURROUGHS. Cross the continent of South America?

Mr. ROOT. Yes, sir.

Mr. JONES. You have to use the British company in Brazil?

Mr. ROOT. North of Rio; yes, sir.

Mr. JONES. You do that now?

Mr. ROOT. Yes, sir.

The CHAIRMAN. That concludes this hearing. We are obliged to the witnesses and thank you, gentlemen, for the fine spirit in which you have carried on the discussion.

If it is the pleasure of the committee, we will bid our guests good-by, and proceed to the consideration of executive business.

(Thereupon the committee proceeded to the consideration of executive business, after which it adjourned.)